No. 89-1836

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

DOMINIC P. GENTILE,
Petitioner

v.

STATE BAR OF NEVADA,
Respondent

On Writ of Certiorari to the Nevada Supreme Court

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI FILED MAY 22, 1990
CERTIORARI GRANTED JANUARY 7, 1991

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December 6, 1988	State Bar of Nevada, Southern Nevada Disciplinary Board, Complaint
January 13, 1989	Answer and Affirmative Defenses in Response to Complaint
February 1, 1989	Notice of Hearing
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February 21, 1990	Opinion of the Supreme Court of the State of Nevada

STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD

Case No. 88-43-82

STATE BAR OF NEVADA,
Complainant,

vs.

DOMINIC GENTILE,
Respondent.

FINDINGS AND RECOMMENDATION
FINDINGS OF FACT

The Respondent, Dominic P. Gentile ("Gentile") was retained to represent Grady Sanders in late 1987 in connection with alleged criminal activity by Mr. Sanders. Mr. Sanders was indicted by the Clark County Grand Jury on February 4, 1988 on charges relating to the theft of a large quantity of cocaine and travellers checks. On February 5, 1988—the day following the indictment of Mr. Sanders—Gentile held a press conference which was attended by members of the electronic and print media. A complete videotape and verbatim transcript of the press conference were introduced into evidence in this matter. At the press conference Gentile made the following statements:

> (i) ". . . the evidence will prove not only that Grady Sanders is an innocent person and had nothing to do with any of the charges that are being levelled against him, but that the person that was in the most direct position to have stolen the drugs and the money, the American Express Traveller's checks, is Detective Steve Scholl."

> (ii) "There is far more evidence that will establish that Detective Scholl took these drugs and took these American Express Traveller's checks than any other living human being."
>
> (iii) "Now, with respect to these other charges that are contained in this indictment, the so-called other victims, as I sit here today I can tell you that one, two—four of them are known drug dealers and convicted money launderers and drug dealers; three of whom didn't say a word about anything until after they were approached by Metro and after they were already in trouble and are trying to work themselves out of something."
>
> (iv) "Now, up until the moment, of course, that [the other victims] started going along with what detectives from Metro wanted them to say, these people were being held out as being incredible and liars by the very same people who are going to say now that you can believe them."
>
> (v) "I think Grady Sanders was indicted because he—he was a scapegoat the day they opened the [safe-deposit] box."
>
> (vi) "We've got some video tapes that if you take a look at them, I'll tell you what, he [Detective Scholl] either had a hell of a cold or he should have seen a better doctor."

Gentile knew that Detective Scholl would be a prosecution witness at Mr. Sanders' trial and he also believed that the "other victims" would be called as witnesses by the prosecution at that trial.

Gentile's admitted purpose for calling the press conference was (i) to counter public opinion which he perceived as adverse to Mr. Sanders, (ii) to attempt to refute certain matters regarding his client which had appeared in the media, (iii) to fight back against the perceived efforts of the prosecution to poison the prospective

juror pool, and (iv) to publicly present Sanders' side of the case. As such, there was a substantial likelihood that the statements would materially prejudice the Sanders trial, which had been scheduled for August, 1988.

Prior to holding the press conference, Gentile conducted research on the question of what statements, if any, he was ethically permitted to make at the press conference. During the press conference, Gentile refused to comment on certain matters because he did not believe it ethically proper to do so.

On or about December 6, 1988 the State Bar of Nevada filed a complaint against Gentile alleging that the statements made by him at the February 5, 1989 press conference violated Supreme Court Rule 177. Gentile answered the complaint on January 13, 1989 denying that his actions violated the rule, and alleging several affirmative defenses.

CONCLUSIONS OF LAW

Supreme Court Rule 177 provides, *inter alia*, as follows:

> 1. A lawyer shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding.
>
> 2. A statement referred to in subsection 1 ordinarily is likely to have such an effect when it refers to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration, and the statement relates to:
>
> (a) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;
>
> * * * *

> (d) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;

The statements made by Gentile violated SCR 177(1), (2)(a) and (2)(d) in that they were statements which Gentile knew would be disseminated by means of public communication; which (i) related to the character, credibility, reputation and criminal record of witnesses in the trial of Mr. Sanders, and (ii) contained an opinion of the guilt or innocence of Mr. Sanders; and were known or should have been known by Gentile to have a substantial likelihood of materially prejudicing the Sanders trial.

SCR 177 does not violate either the United States or the Nevada constitution. The State Bar has not engaged in any unequitable conduct, nor has it applied SCR 177 in a selective manner.

Gentile's statements at the press conference went beyond the scope of the statements permitted by SCR 177(3).

RECOMMENDATIONS

The Southern Nevada Disciplinary Board recommends that Gentile be issued a private reprimand.

DATED this 12th day of May, 1989.

Southern Nevada
Disciplinary Board,
DONALD J. CAMPBELL
Chairman

/s/ Dennis L. Kennedy
DENNIS L. KENNEDY
Chairman of
Disciplinary Panel

[Certificate of Service Omitted in Printing]

[1] STATE BAR OF NEVADA
SOUTHERN NEVADA DISCIPLINARY BOARD

Complaint No. 88-43-82

STATE OF NEVADA,
Complainant,
vs.
DOMINIC P. GENTILE,
Respondent.

Taken at State Bar of Nevada
500 South Third Street
Suite 2
Las Vegas, Nevada 89101

On Monday, April 17, 1989
At 6:44 P.M.

[2] APPEARANCES:

For the Claimant:

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Las Vegas, Nevada 89101

For the Respondent:

NEIL GALATZ, ESQ.
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PANEL MEMBERS:

DENNIS L. KENNEDY, ESQ.
Chairperson
GABRIEL A. MARTINEZ, ESQ.
WILLIAM R. URGA, ESQ.
LYNN M. HANSEN, ESQ.
DAN CASHDEN, Laymember

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[4] (Whereupon, Respondent's Exhibits A through E and State Bar Exhibits 1 through 3 were marked for identification by the court reporter.)

THE CHAIRPERSON: Go on the record. This is the time set for the hearing before the State Bar of Nevada, Southern Nevada Disciplinary Board, in Case No. 88-43-82 entitled State Bar of Nevada, complainant, versus Dominic P. Gentile, respondent.

My name is Dennis Kennedy. I've been appointed as chairman of the hearing panel. I would ask that the other members of the panel please identify themselves for the record.

MR. URGA: William Urga, U-R-G-A, of the firm of Jolly, Urga & Wirth.

MS. HANSEN: Lynn Hansen of Jimmerson & Davis.

MR. MARTINEZ: Gabe Martinez of Greenman, Goldberg & Raby.

MR. CASHDAN: Daniel Cashdan, C-A-S-H-D-A-N, laymember.

THE CHAIRPERSON: Could we have counsel note their appearances, please.

MR. HOWE: John Howe, State Bar of Nevada.

[5] MR. GALATZ: Neil Galatz for Dominic Gentile.

THE CHAIRPERSON: And the record should also reflect Mr. Gentile is present. The record should also reflect that Mr. Gentile through his counsel has filed a memorandum in this matter. I have marked the original memorandum as having been received. Each of the members of the panel have also received a copy of the memorandum.

The record should also reflect that there was an amicus brief filed in this case by the National Association of Criminal Defense Attorneys on or about February 24, 1989, and I assume that all the parties have been provided with a copy of that brief. Is that correct?

MR. HOWE: You're referring to the amicus brief?

THE CHAIRPERSON: Yes.

MR. HOWE: Yes. I received a copy.

THE CHAIRPERSON: Before we begin, are there any matters that should come before the chair? If not, Mr. Howe, would you like to make an opening statement.

MR. HOWE: The matter here tonight involves a single count of alleged misconduct [6] based on statements made by Mr. Gentile to members of the press at a press conference held during the pendency of a criminal case in Clark County District Court involving prosecution of felony charges against Mr. Gentile's client Grady Sanders.

Mr. Gentile through his correspondence with this office and through his Answer has significantly narrowed the issues by admitting that he held a press conference relating to the Sanders case, that he made statements about the case to members of the press who were present.

He has provided bar counsel's office with a videotape of the entire news conference held at the time in issue here. We would offer into evidence the correspondence received from Mr. Gentile and the videotape supplied to us by him of the press conference and show that videotape in its entirety.

Based on that evidence, we will then ask the panel to decide what we believe is the only remaining contested issue, that being whether Mr. Gentile's statements were in violation of Nevada Supreme Court Rule 177 relating to trial [7] publicity. I'm ready to begin.

THE CHAIRPERSON: Mr. Galatz, would you like to make an opening statement.

MR. GALATZ: I think I'll reserve it.

THE CHAIRPERSON: Very well. Mr. Howe.

MR. HOWE: First of all, I've had marked a group exhibit. What's been marked as State Bar Exhibit 1 contains the pleading documents for the case including the Complaint, the first designation of hearing panel members, respondent's preemptory challenge, Answer and affirmative defenses filed by the respondent, notice of hearing, second designation of hearing panel members,

designation of witnesses and summary of evidence and the amended notice of hearing. That document's been marked as State Bar Exhibit 1 and I've provided a copy to Mr. Galatz and I would offer it as Exhibit 1.

THE CHAIRPERSON: Mr. Galatz.

MR. GALATZ: That's been stipulated to.

THE CHAIRPERSON: Okay. Very well.

MR. HOWE: I've also then had marked documents as State Bar Exhibit 2 and State Bar Exhibit 3. I've shown these documents to Mr. Galatz. What's been marked as State Bar [8] Exhibit 2 is the original of a letter on the letterhead of the law office of Dominic P. Gentile over Mr. Gentile's signature dated April 6, 1988, related to the grievance which gave rise to this proceeding and what's been marked as State Bar Exhibit 3 is a letter on the letterhead of the law offices of Dominic P. Gentile, Limited, over the signature of Dominic P. Gentile dated April 27, 1988, and related to the grievance filed which gave rise to this charge.

So I would offer then State Bar Exhibits 2 and State Bar Exhibits 3 at this time.

MR. GALATZ: Object, no foundation.

MR. HOWE: Okay. The, that being the case then I would ask that Mr. Gentile be sworn so I can question him about these documents.

MR. GALATZ: Object. He was not listed as a witness by Mr. Howe.

MR. HOWE: I don't believe that it's necessary for me to list him as a witness to have him sworn to ask him whether or not he received the documents receipted at this office over his signature.

MR. GALATZ: My understanding of the rules, Mr. Chairman, are that State Bar counsel is [9] obligated to supply a list of the witnesses that he's going to call in these proceedings. He has not listed any such witnesses. I don't know if I have the rule number but it's in the Supreme Court rules.

THE CHAIRPERSON: You're probably referring to Rule 105.2c.

MR. GALATZ: I believe that is correct.

MR. HOWE: The purpose of that rule is to make sure that there is full disclosure of discovery so that bar counsel is not concealing evidence from the respondent.

Certainly calling of a respondent would not be something—any evidence that would be adduced would not be something that would probably be concealed or which would be the basis of any denial of full disclosure or full discovery to the respondent.

I don't believe the rule applies to the calling of a respondent as a witness to identify the documents he sent to the State Bar.

THE CHAIRPERSON: Mr. Galatz?

MR. GALATZ: I don't see anything in there that says that anyone is exempt from it, party or non-party. [10] THE CHAIRPERSON: The Chair agrees with Mr. Howe's interpretation of the rule. I don't think that there's any prejudice to the respondent by virtue of his not having been listed as a witness. So if Mr. Howe wants to lay the foundation to authenticate Exhibits 2 and 3, then he may do so.

MR. GALATZ: May I see the exhibits and maybe I'll save you the time in light of the ruling reserving my objection. They are his letters. We'll stipulate to that. That's reserving the objection.

THE CHAIRPERSON: Then Exhibits 1, 2 and 3 are admitted.

MR. HOWE: Both the documents marked as State Bar Exhibits 2 and 3 reference a videotape. Exhibit 2 states, I am in the process of obtaining a copy of the videotape made by the television station at a news conference you referenced in your letter of March 29, 1988. Since the videotape is a complete record of what I said, I am sure the tape is much better than anything I could put in writing. I should have a copy of the tape within a week and will send it to you for your review.

[11] Paragraph 2 of exhibit, State Bar Exhibit 3, the letter of April 27th, second paragraph states, turning to

the substance of the grievance, as is often the case the print media was selective in reporting what I said at the press conference. Additionally at least one of the papers was less than wholly accurate as to what I said and having hand delivered to you concurrently a videotape copy of the entire press conference I have marked it as, quote, respondent Gentile's Exhibit A, close quote. I ask that you view this tape and make it part of the permanent record.

(Whereupon, State Bar Exhibit 4 was marked for identification by the court reporter.)

I've had marked as State Bar Exhibit No. 4 the original videotape bearing the marking respondent Gentile's Exhibit 4 which was received at this office along with Mr., [sic] the letter from Mr. Dominic P. Gentile on April 27, 1988. I would offer that videotape into evidence and request permission of the chairman to show the tape at this time.

MR. GALATZ: We'd object to it for lack of [12] foundation and for the fact that Mr. Howe has just testified as a witness.

THE CHAIRPERSON: I think what we will have to do before we can rule on the admissibility of the tape is we're going to have to see it to see if in fact it is what it purports to be, Mr. Howe, so you do have permission to play it and once it has been played, we'll take up the question of its admissibility.

(Whereupon the videotape marked as State Bar Exhibit No. 4 was played.)

THE CHAIRPERSON: Having now played the tape, Mr. Howe, do you want to renew your effort to admit the tape?

MR. HOWE: I would once again offer the videotape bearing the marking respondent Gentile's Exhibit A and which has now been marked as State Bar Exhibit No. 4 as State Bar Exhibit No. 4.

MR. GALATZ: Objection, lack of foundation and Mr. Howe has testified as to foundation when he's not a listed witness.

THE CHAIRPERSON: Unfortunately Mr. Howe did have to give some evidence as to the foundation for the tape because it was presented [13] to him. Again, I don't think that the lack of listing Mr. Howe as a witness in this matter has prejudiced your client. The respondent did provide the tape directly to Mr. Howe and it would not, is not surprising Mr. Howe would have to offer by way of testimony or simply a representation as to how he came into possession of the tape.

In light of your objection as to foundation, perhaps Mr. Howe would want to place Mr. Gentile under oath and ask him some questions about the tape, about providing it, whether or not it's the same, et cetera, et cetera. Perhaps that would eliminate the foundational problems that you're indeed raising.

MR. GALATZ: Again we would object that Mr. Gentile was not listed as a witness.

THE CHAIRPERSON: Okay. The Chair has already ruled on that point. Your objection is noted. Mr. Howe, in order to address the foundation questions you may go ahead and have Mr. Gentile authenticate the tape if you'd like to do so.

MR. URGA: Has he been sworn?

THE CHAIRPERSON: No. He's going to be [14] sworn right now.

DOMINIC PASQUALE GENTILE,

having been first duly sworn to testify to the truth, the whole truth and nothing but the truth, was examined and testified as follows:

EXAMINATION

BY MR. HOWE:

Q. Would you state your name, please.

A. Dominic Gentile.

Q. Mr. Gentile, are you an attorney licensed to practice law in the State of Nevada?

A. Yes.

Q. How long have you been so licensed?

MR. GALATZ: Excuse me. We're now going beyond the scope of foundation that you said you would allow him to go into.

MR. HOWE: I'm just identifying the witness.

THE CHAIRPERSON: I think he can go ahead and just try to limit the scope of your [15] introduction to just get right to the authentication if you would.

MR. HOWE:

Q. Are you the respondent in this particular proceeding?

A. Yes, I am.

Q. Okay. And did you receive notice from me as bar counsel that there was an investigation underway of a press conference that you had held regarding the Grady Sanders case?

A. I received a letter and it bore your name. I assume that you sent it to me.

Q. And did you respond to that letter by sending the two documents that have been marked as State Bar Exhibits 2 and 3?

A. Yes, I did.

Q. Directing your attention to State Bar Exhibit No. 3, the reference in there to respondent Gentile's Exhibit No. A referring to a videotape, did you send a videotape along with that letter—

A. Yes.

Q. —when you sent it to my office. And did you mark that videotape [16] respondent Gentile's Exhibit A?

A. I don't remember but the letter says that I did so I must have.

Q. I'd like to show you what's been marked as State Bar Exhibit No. 4.

A. That's my handwriting. Well, wait a minute. I don't think that the last line that says approximate

running time 15 minutes. I don't think that's my handwriting but the two lines above that are.

Q. Okay. The two lines that say respondent Gentile's exhibit single quote A single close quote and grievance No. 88-43-82 is your handwriting?

A. Uh-huh, yes.

Q. The videotape that you sent along with the letter with that reference on there, was it a tape you had obtained of the news conference you held in the Grady Sanders case?

A. Yes.

MR. HOWE: I'd once again offer what's been marked as State Bar Exhibit No. 4.

MR. GALATZ: Same objections.

MR. URGA: The tape that was played, was that the tape you sent to him? The one we just [17] saw?

THE WITNESS: To answer that question yes or no I don't know that I could but it's certainly not worse than a copy of a tape I sent.

THE CHAIRPERSON: Are the events that were depicted on the tape a true and accurate record of your statements and the statements of other unidentified persons that were made at the press conference that you held?

THE WITNESS: Yes, a few things happened before it and a few things happened after it that I don't know if they're of any significance but in terms of what was on the tape, that is not accurate.

THE CHAIRPERSON: The tape has not been edited. The tape is complete.

THE WITNESS: Not that I know of. I obtained the tape from a television station so I can only tell you that I tendered the tape as I received it. I think I made a copy. I'm sure I did because I wanted one for myself. Whether it was edited or not I really would have to say I don't know. Okay? But to tell you that I remember vividly everything that was done during that conference, that would be a lie.

[18] THE CHAIRPERSON: Mr. Galatz, are you going to renew your objection?

MR. GALATZ: Same objection for the record.

THE CHAIRPERSON: The tape's admitted, Exhibit 4.

MR. HOWE: I have nothing further to offer. The State Bar would rest.

THE CHAIRPERSON: Mr. Galatz?

MR. GALATZ: Move to dismiss the charges on the basis that the case as presented fails to establish a violation of the rule. Excuse me. May I get a drink of water? This throat is—

THE CHAIRPERSON: Yes. We're off the record for a moment.

(Pause in proceedings.)

MR. GALATZ: The rule I would submit is unconstitutional as is set forth in both of the briefs that have been filed. The statements do not violate the rule if you think the rule is constitutional on its face. We would move to dismiss.

THE CHAIRPERSON: The Chair will take your arguments under advisement, Mr. Galatz, but for the time being they're denied. You can make your [19] opening statement if you wish to do so.

MR. GALATZ: We have a lot of witnesses waiting so it will have to be very, very brief. Basically we're going to call several witnesses. They're all lawyers. One of them is Brian Greenspun who is, as you are aware, a member of the press; another is Janet Rogers who is connected with the television media.

They will both speak to the issues of press coverage of criminal matters, how the press secures information, the natural prosecution bias that is built into the information sources they have, the fact that the press coverage has a definite effect socially, economically, both adversely on an accused in a criminal matter, that they both as lawyers and members of the media recognize

this problem and recognize that a lawyer does not just represent a client in a courtroom but has an obligation to speak for the client to prevent the client's social and economic life and that of his family from being ruined during the time period that the coverage is going on on the potential trial.

They will also based upon that rule be tricks of the voir dire pointed out that [sic] [20] it's their opinion but again as members of the press and experienced lawyers that there was no prejudice on the jury as a result of any statements by Mr. Gentile and as you see from Exhibit A there is a mass of media coverage that inundated and surrounded the entire proceedings and there is no segregation of that.

There are only one of those multiple things being the press conference in issue out of a welter of media coverage that's summarized for you in Exhibit A. Other lawyers that will testify are Ed Kane and Dan Markoff. Again, I don't think you need introductions to them, at least the lawyer members.

Ed Kane was formerly with the U.S. Attorney's office. David Markoff has served as federal public defender. Both have handled many, many criminal cases and both again as attorneys are experienced in this matter will point out the prosecution bias of the press, the need for the lawyer to step forth in discharging his obligations to his client and defend him in the press long before you ever get to the courtroom and that again the press conference in their opinion had no effect on the adverse effect [21] on the jury selection or jury voir dire in this case.

Obviously Mr. Gentile will testify he has reasons and motives that are essentially along the lines as I indicated the other witnesses will.

I would ask your permission to take Mr. Greenspun out of order because he indicates he has another commitment and I sort of tried to promise him that we'd get

him out as quickly as possible so it may be a little out of sequence but if we can I'd like to do him first.

THE CHAIRPERSON: That's fine.

MR. GALATZ: Okay.

BRIAN LEE GREENSPUN,

having been first duly sworn to testify to the truth, the whole truth and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GALATZ:

Q. Will you state your full name for the record, please.

[22] A. Brian Lee Greenspun, G-R-E-E-N-S-P-U-N.

Q. Mr. Greenspun, will you tell the panel please your educational background.

A. I went to college, Georgetown University, graduated law school Georgetown University, I think that's it, my formal education.

Q. What bars are you admitted to practice before?

A. California and Nevada.

Q. When did you get admitted in Nevada and California, sir?

A. 1971 or '2. I think it was the end of '71, beginning of '72.

Q. What has your experience been in the practice of law as it relates to the criminal field?

A. I practiced, actively practiced in Nevada from 1972, the beginning of '72 until somewhere near the end of '75 I believe. And did some civil work '75, '76-ish on an active basis then I left the active practice or the full time practice of law.

I have been an alternate [23] juvenile referee and a North Las Vegas Municipal Judge alternate since that time and spend maybe ten hours a year sitting, 12 hours a year sitting in each one of those capacities but in terms

of the active practice for the most part I gave up full time practice in about '76.

Q. What criminal law experience have you had?

A. I was with the public defender's office for about two years and then on my own with another lawyer where I practiced criminal law for another year and a half after that.

Q. What has been your experience in the newspaper business?

A. I—well, I've worked for a couple of newspapers prior to coming back to the Las Vegas Sun in 1975 or '6 and I left the full time practice of law whether it was '75 or '76 whenever that was I had been with the Las Vegas Sun ever since.

Q. What is your position and title at the Sun now?

A. I am currently president and associate editor of the Las Vegas Sun.

Q. Are you familiar with the way [24] newspapers gather information on criminal cases?

A. I believe so, yes.

Q. Could you tell the panel how this is done and what bias, if any, this results in the system?

A. Well, there are a number of—there is [sic] many ways of gathering news on the criminal justice system as there is imagination but generally the reporters have access to the figures for one in the Clerk's office. They have access to the lawyers generally on either side. They have access to the court personnel. When I say access, they know them and they talk to them. Whether they get answers depends on the particular lawyers in the case at hand.

Of course there's always the court watchers they have access to and they have access to, well, as I said court personnel, bailiff, other lawyers who watch cases, jurors, and they set about depending on the kind of case if they're very interested in it they will dig and they will read through files. They will talk to as many of the lawyers involved as they can. They will go to the police

departments, District Attorney's office, the investigators and they will [25] do their research that way.

Now, depending on how important the case is sometimes it's not a real important case it's just a matter of getting it down for the record they'll rely on what's filed in the house or what they hear. Assuming a case such as Grady Sanders where there obviously has been notoriety what type—that was a high profile case and usually the reporter or reporters assigned to that case will do as in depth a review or get as much as they can on that particular case because of the kind of notoriety. Frankly it's the stuff of which good stories are made.

Q. These good stories that are made, what are the sources that wind up being used in a Grady Sanders type case?

A. Well, in this particular case I can't specifically tell you all the sources but the kinds of sources would be police, investigators, D.A.'s, people who worked at the vault company, friends of friends who knew friends, you know. I mean wherever you can get them.

Q. Is there evidence that develops in the presentation of this type of a high profile [26] case?

A. Well, there's no question about it. There's an imbalance in most criminal cases.

Q. What is the imbalance and how does it occur?

A. The imbalance is the access to information. Most reporters have a greater access to the Police Department than they have to defendants. Either defendants are told by their lawyers not to talk or the lawyers aren't talking or they can't get that kind of information from other sources and they turn around to the police.

They have the files, the policeman's name, the reports and frankly in the last 15, 20 years or so there's been—I don't know if it's a change but certainly a highlighted effort by the police agencies all across this country to emphasize the good work they're doing and they do that in any number of ways. Any way they can get it disseminated.

They want the voters who vote on their bond issues and vote on their salaries and vote for their Sheriffs in whatever communities they want them to know all their good works so it's almost part of the system that they [27] want that stuff disseminated and they find reporters who are willing to tell that story and people who read newspapers and watch TV want to know those kind of stories.

We all grow up respecting the Police Departments of our communities and we like cops and robbers stories and so we like to read it and so the newspapers appear I'm sure the other media go out of their way to find those kind of stories and it just so happens at least from my experience that access to that kind of information is much more readily available from the police side.

Q. You've looked over the clippings in the Grady Sanders case, Exhibit A. Does that appear to be what occurred here?

A. Exhibit A is—show me—are those the stories?

Q. Yes.

A. Yeah, yes. No question about it.

Q. This loading of information towards the prosecution side, what effect does this have on the accused in a criminal case? I'm not even to the trial stage. I'm talking about [28] how it effects him before you even get to trial if at all in your experience.

MR. HOWE: I want to object. I don't know that this witness has any special qualifications to answer that question unless he can testify about what effects the news coverage might have on the defendant and so I think it's an improper question and I would object to it.

THE CHAIRPERSON: You object to the lack of foundation?

MR. HOWE: Yes.

THE CHAIRPERSON: Okay. That objection's sustained. You can lay the foundation if you'd like to.

MR. GALATZ: Okay.

Q. Have you had occasion both as a newspaper man and as an attorney handling criminal matters to observe and see the effects on a person who is accused with this type publicity?

A. Oh, yes, many times.

Q. And on the Grady Sanders case were you able based on materials you saw able to arrive at any opinions or conclusions concerning the possible and potential effects on him?

A. Yes, yes.

[29] Q. What are the effects on the accused in this specific case and in general?

A. I don't think they're a lot different.

MR. HOWE: I would like to renew my objection. I think the question is improper and it is essentially opinion evidence with no proper foundation as to why this witness should be more qualified to offer his opinion than the panel to form their own opinions so I object to the line of questioning in a particular question.

MR. GALATZ: The witness presents a unique combination of experience. He presents experience not only as an attorney handling criminal matters but as a newspaper man who is involved with the dissemination of the information and the results of the dissemination.

THE CHAIRPERSON: The Chair will admit the testimony but it seems to the Chair that it's of perhaps marginal relevance but I'll go ahead and admit it.

THE WITNESS: I started to say it's not that much different from most people whose—about whom stories appear in the newspaper in a negative light. It's just that [30] much worse because there's a criminal stigma attached to it. You've got kids at school who take a beating. You've got wives and other family members who take a beating as a result of the stories. You've got a social stigma that attaches to the accused, if you will, wherever he goes and you have people forming opinions and talking about it in groups like this or cocktail gatherings because of what they've read or see on TV.

It happens all the time and I get those people in my office all the time not just accused but it's that much worse when someone is held up that kind of scrutiny with a criminal charge against him and it's something that I have to deal with every day whether or not to even publish stories 'cause we try to look at the kind of harm it does to the people and their families.

Now, many times the news value outweighs that. Most times it outweighs it but every once in a while there are decisions made to hold it because the harm to the individual is much greater than the public good that's derived from printing the story so I'd say certainly in the Grady Sanders case, I mean this is one of the most notorious stories of this type in the last few [31] years.

There's no question. I mean I know personally the kind of ridicule Grady Sanders took because of the stories. Forget what happened once he went to court.

MR. GALATZ:

Q. What obligation does this impose upon an ethical criminal defense lawyer representing a man like Grady Sanders where there is this kind of pretrial publicity?

A. In my—

MR. HOWE: I want to object to that question as well. There's absolutely no foundation for this witness to testify about what obligation may be upon the defense counsel to respond in this case.

THE CHAIRPERSON: Well, go ahead, Mr. Galatz.

MR. GALATZ: I think again that the witness is qualified as an expert in the area of criminal law and in press coverage both. I believe that the charge in this case is based upon an assumption that there is something inherently wrong with speaking to the press and that there's some sort of fashion in saying that if you speak [32] to the press you've done something wrong.

Every case that's been cited in the briefs says you go beyond that and you have to look to see what the real world is and what the effects of these indictments and

accusations are on the accused. Indeed the language quoted in both briefs—one of the points made by the courts in striking down the rules of this type has been the fact that the accused is held up to social, economic disparagement and that he needs and indeed the lawyer is obligated to step forward and speak for that person by virtue of his better training and by virtue of the fact that he is in a position to meet the publicity problems that have surrounded the case and of the imbalance that exists because of the police bias, by the news gathering sources must be met by the lawyer and again it's not improper law but it is proper evidentiary information that the law is before the record.

THE CHAIRPERSON: That may be the case but the objection is going to be sustained. The reason for the ruling is that the attorney's obligations under the rule whether they be to come forward or to remain silent is a matter that the [33] panel has to decide and we don't need to have expert testimony on what those obligations are. We'll have to decide what the rule says and what it means.

MR. GALATZ: For the record we would like to make an offer of proof then indicating that the obligation of the attorney would be testified to by this witness to meet the problems that are created for the client by the press coverage in meeting social and economic disadvantages that he's placed in.

THE CHAIRPERSON: Very well. That's your offer?

MR. GALATZ: That's correct.

Q. You've reviewed the voir dire examination which is Exhibit C in its entire transcript and B has the excerpts. Based upon your examination and again upon your experience as a criminal defense lawyer—

THE CHAIRPERSON: Excuse me. I don't know that those have been admitted.

MR. GALATZ: Those were stipulated to.

THE CHAIRPERSON: Have we got those in the record that they were in. Okay. Very well. I'm sorry. [34] MR. GALATZ: I'm sorry. We did that before you came in.

MR. HOWE: It probably should be formally offered and admitted for the record.

MR. GALATZ: We would for the record move the admission of A through E of the respondent's exhibits.

MR. HOWE: No objection.

THE CHAIRPERSON: Then Exhibits A through E of the respondent's exhibits are admitted.

MR. GALATZ: Thank you.

Q. Based upon the review of the transcripts of the voir dire which full transcript is in Exhibit C I believe it was and B is the excerpts dealing with the question of press coverage, do you have an opinion as to the effect of the press coverage resulting from Dominic Gentile's statement upon any of the jurors and specifically whether or not the press coverage given by Mr. Gentile materially prejudiced the jury?

MR. HOWE: I want to object to the question on lack of foundation. I don't believe that there's any way it's been established that this witness would have a basis for rendering such [35] an opinion.

THE CHAIRPERSON: Mr. Galatz?

MR. GALATZ: The witness has reviewed the transcript of the voir dire selection of the jury pertaining to these portions of the issue of voir dire. The witness again has several years of experience as a criminal defense lawyer. I submit that he is an expert based upon the review of this specific transcript of the selection of the jury can render an appropriate opinion. [sic]

THE CHAIRPERSON: The objection will be overruled. The witness can testify.

THE WITNESS: If I remember the question the question was did I find anything in voir dire that indicated that the jury was adversely affected or prejudiced by the press conference.

MR. GALATZ:

Q. That's correct.

A. I found nothing in here, absolutely nothing, surprisingly but that's the way juries are. They answer truthfully. They didn't—what I saw in here is they weren't effected in the slightest.

Q. Mr. Greenspun, you've looked at Exhibit E which is Rule 177.

[36] A. Yes.

Q. What is the relationship of that rule to the application of the first amendment? And I'm asking for your view as a newspaper man right now.

A. I have to say that this rule is—

MR. HOWE: Excuse me. I want to object because I'm not sure I understand the question. If the question is if he's asking whether or not this rule violates the Constitution, then I think that's an improper question and I want to object to it on that ground.

That's an issue that would have to be decided by a court of law applied to the Constitution and there's no foundation for this witness to testify and it's not relevant to these proceedings to get this witness's opinion as to whether or not that rule is constitutional or unconstitutional.

THE CHAIRPERSON: Mr. Galatz?

MR. GALATZ: Whether a rule is constitutional or unconstitutional is not something that is decided in a vacuum. The rights to freedom of the press and free speech are rights [37] that have to be balanced against a world where many things are occurring.

You don't simply say that we take something without any factual background and decide that it is or isn't constitutional. You have to relate the language to the circumstances.

We all would agree yelling fire in a crowded theater in the dark is probably something that can be properly prohibited. What the effect of a rule like this is as it relates to the type information we're dealing with here

where there is allegations of public misdeeds, misdoing, misconduct, and the rights to freedom of the press are clearly things that have to be weighed in determining the constitutionality of this rule. That again is addressed in the cases that are cited in the briefs.

I would suggest that foundation evidence supporting that material is totally admitted and totally proper and comes via the expertise and experience of somebody in the newspaper business and double in this instance because of criminal lawyer experience.

MR. HOWE: My point is that the witness's opinion as to whether not this rule is [38] constitutional or unconstitutional is totally irrelevant. We could call in a thousand witnesses all who testified that in their opinion this rule is unconstitutional and that is not evidence the rule is unconstitutional. It's got to be decided by the Court deciding rules of law. It's not a matter for opinion evidence.

THE CHAIRPERSON: Mr. Greenspun's opinion, if that's what he was going to give, as to the constitutionality of the rule, of course, is inadmissible. As I understood it from your comments, Mr. Galatz, you were going to focus on something else other than his opinion as to the constitutionality so I would just ask in light of the ruling to go ahead and rephrase the question if you would.

MR. GALATZ:

Q. What is the effect of Rule 177 on the rights to free press?

A. In my opinion if I were sitting in my editorial board looking at this particular case and trying to judge whether or not it's appropriate for a newspaper to take a position on the criminal justice system in Nevada and the way it is operated vis-a-vis these rules in this [39] particular case it would be my opinion, and there's no question it would be my opinion, that if a lawyer did not do everything he could possibly do to level out the playing field of pretrial publicity, he would be derelict in

his responsibility and he would not be doing or upholding his oath that says I will protect my client's rights to the fullest.

If he were to allow the continuing leaks mostly in this case mostly from the prosecutor's side to poison, if you will, the environment of potential jurors, to poison the school yards, to poison the grocery stores or the social clubs or wherever the families hang out, he would be derelict in that responsibility because that's part of protecting his client's interests and in our editorial board that's the kind of issue—this is the kind of issue that's very, very ripe if he didn't do in my opinion what he did if that answers your question.

Q. There are allegations of police misconduct. What is the role of the press and the lawyers involved in the case when it comes to serious allegations of governmental misconduct?

A. That is our rason detra [sic] as they [40] say. That's why newspapers and television stations and radio stations exist. That's why the first amendment is here. The government is our servant. We are supposed to report on what our government does in our name and fortunately or unfortunately we don't—you know, we're not clairvoyant and we're not all knowing.

We can't see the future. We can't see the past often and we have to rely on people who are involved daily in these incidents to let us know what our government is doing in our name and I think it's our obligation once we hear it to pursue it and frankly I think it's every citizens' obligation if they see something that our government is doing wrong to bring it to light.

Just like—maybe it's a little off the subject but President Bush's signing the whistle blower law. It's the same thing. You've got to reward citizens for reporting malfunctions or misfunctions in the government and I think lawyers are as much citizens as everybody else or should be.

MR. GALATZ: Excuse me. May I just consult with my client since I have the unique [41] privilege as a lawyer.

No further questions.

THE CHAIRPERSON: Mr. Howe, cross-examine.

CROSS EXAMINATION

BY MR. HOWE:

Q. Mr. Greenspun, did you attend the press conference in question here that Mr. Gentile held regarding the Grady Sanders case?

A. No, I didn't, but I saw the tape.

MR. HOWE: Okay. That's all the questions I have.

THE CHAIRPERSON: Redirect?

MR. GALATZ: No.

THE CHAIRPERSON: Can the witness be excused?

MR. URGA: Can we ask questions?

THE CHAIRPERSON: Sure. Go ahead, Bill.

MR. URGA: I have several questions.

EXAMINATION

BY MR. URGA:

Q. Mr. Greenspun, first of all you've talked about poisoning the atmosphere. Did [42] you see any evidence that this case was poisoned in any way?

A. You mean from the transcripts or prior to?

Q. No. From the evidence that you've reviewed.

A. Oh, absolutely.

Q. What evidence did you review that show there was poison?

A. When I look at poison I look at the kind of news stories that were run.

Q. I didn't ask you that.

A. Well, that's what I'm asking you if it's a trial.

Q. No. You looked at a bunch of documents and you talk about poison but I don't see that you've referred to

any documents that show poison. In fact you commented the other way.

A. No. That question was, Mr. Urga, the voir dire was the jury—was the jury prejudiced or did it appear prejudiced and I said no, not from the answers they gave on voir dire. If you mean by poison was the general public poisoned, if you will, I don't know about [43] that term, poisoned toward Grady Sanders based on all those stories that were run clearly they were.

Q. Now, you're not saying your newspaper is biased?

A. Of course not. We have an inherent bias.

Q. Towards the police then I take it?

A. Absolutely, absolutely. We don't—it comes out that way. In reality we don't have any. I mean I don't have one but the nature of the stories and the sources of the stories and the kinds of stories that we run there is an inherent bias, yes, in all media in my opinion.

Q. And do you know Mr. Sanders?

A. I know Mr. Sanders.

Q. And you said he had problems I take it?

A. Oh, yeah.

Q. What problems did he have that you know personally?

A. He was—I mean he's a big Rebel booster, okay? He used to go to all of the basketball games. He was ashamed to go to [44] basketball games. He wouldn't go. The ridicule, the questions he had to go through, "Did you do it? Why did you do it?" The kind of looks he got. He happened to be a client of my wife on the business that she's involved in and she was telling me too what's, you know, poor Grady.

Now, I don't know Grady that well that I could tell you that it effected him deep down to his soul but it's the kind of effect that I see on a number of people who are the subject of adverse publicity. They're afraid to go out of their house half the time.

Q. And do you feel that if Mr. Gentile or any other attorney then is allowed to state his side of the case, that somehow changes it?

A. I feel that if the prosecution is allowed to state their cases the way they do, that somebody has to get up there and speak for the defendant to even it out. I don't believe frankly that either one should do it but if one's doing it, you can't do it in a vacuum. You have to get out there and level the playing field for your client.

Q. So you would be in favor of a [45] total lack of comment from either side?

A. As a lawyer. As a newspaper man I'm all for comment from everybody but if you're talking strictly as a lawyer I think the cases should be tried in court but in the last two or three decades cases are not tried in court. Many of these high profile cases are tried in the public arena long before they ever get to court.

Q. What comments do you know of that the prosecution, we'll use that term, generally made that were in violation of Rule 177?

A. Oh, I don't know any specifically that were in violation of the rule. The fact that they comment. The fact that—the issue is on all three stories that I read and about, you know, what—not just what Grady Sanders was charged with but that, you know, the cops passed a polygraph, things like that. These are—I don't know if they're leaked at the prosecution.

I look at the prosecution as everybody on the other side of the bench, on the other side of the aisle so that includes the police, the investigators and everybody else. Those stories came from somewhere. Our reporters [46] can't make those stories up and I kind of doubt that those stories would come from the defense because they were pro prosecution stories so my hunch is that they came from the prosecution side whether that's the police or the District Attorney or whoever and those stories laying bare long before you ever get to trial do as much

or more harm to the individual and his family without being addressed and I think—

Q. Do you believe that the defense attorneys are prohibited from saying anything?

A. No, I don't believe they're prohibited from saying anything. I think the way sometimes the rules are interpreted what they say chills them so—what they can get in trouble for chills them enough that they're afraid to say what they should say.

I think these specific rules, Rule 177 to a certain extent chill lawyers. I watched that tape and I saw Dominic say that he read the rules and he read the law the night before and there was only so much he could say and there was so much that he couldn't say so what he was going to say was within the rules, was in his opinion what he thought was within the rules.

[47] Now he's sitting here within this group because what he said wasn't within the rules or at least somebody thinks it wasn't within the rules. Now, if he's to take that position and the next guy says I read the same rules and laws Dominic says but I can't say what Dominic says that chills the next lawyer down the road.

MR. URGA: I have nothing further.

THE CHAIRPERSON: Do any of the other panel members have questions? Does counsel have no further questions?

MR. GALATZ: I have a question or two.

REDIRECT EXAMINATION

BY MR. GALATZ:

Q. The statements attributed to the Metropolitan Police about the polygraph being taken and passed by the officers, is that a proper statement of evidence that could go into a courtroom?

A. You're asking me this?

Q. Yes.

A. Not the way I understand the law.

Q. And is it proper for Sheriff [48] Moran to give character evidence as to his police officers?

MR. HOWE: I'm going to object.

THE WITNESS: I don't know.

MR. HOWE: I think we're questioning stating as facts not to evidence in the question. I'm not—

MR. GALATZ: They're in Exhibit A in the articles.

THE CHAIRPERSON: Is there an exhibit?

MR. GALATZ: Exhibit A contains the facts that the officers passed the polygraphs and that Sheriff Moran thinks that detectives are wonderful men and we stand behind them and how honest and wonderful they are.

Q. Are those proper statements to go into court?

A. Well, if Sheriff Moran were to say that in court—I don't know. It depends on the judges around here but I think whenever Sheriff Moran gives his opinion on his police officers that goes a very long ways. He's a very popular sheriff. He's not going to lie to the people. They've elected him by outrageous mandates and he's not going to do anything but [49] tell the truth and, you know, that's very damaging to the other side.

Q. It's a fair statement by defense counsel "My client is innocent" and remember the presumption of evidence is that a sufficient statement to protect his client in view of the press coverage reflected in Exhibit A?

A. If it were me I'd have said a whole lot more. He felt constrained to say only that.

MR. GAYATZ: Thank you. Nothing further.

EXAMINATION

BY MR. URGA:

Q. Carrying it one step further, Mr. Greenspun, do you have Exhibit E. That's the Rule 177.

A. I had it here someplace. Yes, sir.

Q. Tell me what you think rule sub part 3-A means that a defense attorney in this case could say that you feel since they've held you out as an expert in this area apparently or at least knowledgeable what you believe the defense attorney can say?

[50] A. On 3-A?

Q. Yes.

A. The general nature of the claim or defense. That is what you're saying.

Q. Correct.

A. My guy wasn't there. He had an alibi. He was in Saskatchewan.

Q. So he can set forth in your opinion defenses?

A. It would appear the general nature of them.

Q. Assuming that a polygraph was admissible can he say that "My client passed a polygraph"?

A. I don't know because whatever you say you may wind up here. I think that's the whole issue. You don't know what you can say so rather than say anything, you say nothing and that hurts your client.

MR. URGA: I have nothing further.

THE CHAIRPERSON: If counsel have no further questions, the witness can be excused.

THE WITNESS: Thank you.

MR. GALATZ: Thank you very much.

(Whereupon Brian Lee [51] Greenspun was excused.)

MR. GALATZ: Dominic, do you want to swing over there where you can be seen.

THE CHAIRPERSON: Before we continue, Mr. Galatz, is there a complete transcript of the tape Exhibit 4 in evidence?

MR. GALATZ: No.

THE CHAIRPERSON: Is that a part of your package?

MR. GALATZ: No.

THE CHAIRPERSON: I thought that it was. It's been called to my attention that the court reporter did not transcribe the tape as it was being played.

MR. GALATZ: I have a transcript that I can make available to you a copy. [sic]

THE CHAIRPERSON: Okay.

MR. GALATZ: There are a few words in the beginning it missed. The transcript—

MS. HANSEN: Is it by a court reporter?

THE RESPONDENT: Lisa Brenski.

THE CHAIRPERSON: We'd like to get a copy of that—

MR. URGA: Isn't that part of what C is?

MR. GALATZ: That's the voir dire [52] examination, opening statement, final argument. The press conference I have a copy. I've got markings on mine. Do you have a clean copy?

THE RESPONDENT: Of what?

MR. GALATZ: Of the transcript of the—

THE RESPONDENT: I don't have one with me but I know I must have one. I mean I have a complete copy of everything.

MR. GALATZ: I have notes on it so I obviously have have some reason—

THE CHAIRPERSON: We have to have that as part of the record. I thought like Bill did it was a part of exhibits.

MR. GALATZ: I misled you then. That was not part of it.

DIRECT EXAMINATION

BY MR. GALATZ:

Q. Would you state your full name again for the record.

A. My name is Dominic Pasquale Gentile.

Q. Mr. Gentile, could you tell the panel, please, where you went to undergraduate school and law school?

[53] A. I did my undergraduate work and obtained my J.D. from DePaul University in Chicago.

Q. What bars are you admitted to practice before?

A. I am admitted in the State of Illinois, State of Nevada, the United States Courts of Appeals for the fifth, seventh and ninth circuits, the United States Supreme Court and a number of federal district courts I have appeared—I mean that's where I'm admitted. Okay. I've also appeared before many others.

Q. I'm sorry. Did you give us the circuits that you're admitted in?

A. Fifth, seventh and ninth.

Q. What about the U.S. Supreme Court?

A. Yes, U.S. Supreme Court.

Q. What part of your practice consists of criminal defense work?

A. I never did anything except criminal defense work. Okay. I do a little civil work now and then and I don't do it very well but I would say in the last 17 years, 90 percent of what I have done has been in the defense of [54] criminal cases. I've never prosecuted. I've never worked for a state agency.

Q. The criminal bar has certain associations that are devoted to that aspect of law; is that correct?

A. That's correct.

Q. Have you been active in any of those?

A. I've been a member of the National Association of Criminal Defense Lawyers I think since 1972 at the worse '73. I served six years on the board of directors of that organization. When I left Chicago in 1977 I left to become the associate dean at the National College for Criminal Defense. At that time I think it was called the National College for Criminal Defense Lawyers and Public Defenders. It was part of the University of Houston Bates College of Law and it was—it's still in existence. It's in Macon, Georgia, now but it's funded by at that time the

law enforcement assistance administration which is part of the federal government and also funded by the criminal justice council of the American Bar, the National Association of Criminal Defense Lawyers and the [55] National Legal Aid and Defenders Organization.

Q. How long did you serve as assistant dean?

A. Associate dean.

Q. Associate dean.

A. Two years.

Q. Was this a full time position?

A. Yes. 1977 and 1978 I lived in Houston, Texas, doing that.

Q. What were your duties, what was your job?

A. Putting together continuing legal education programs, writing books, writing materials for those programs, setting up seminars.

Q. Have you published any works in the criminal law field?

A. I've published a number of works in the criminal law field. The most recent one I oversaw a project for the—I was chairperson of the American Bar Association Criminal Justice section RICO committee and one of the projects that I started and we finally completed was we did a set of patterned jury instructions in RICO cases and it was published in the Volume I of the 1988 volume of the Bringham Young University Law [56] Review. That's probably the last thing that I did but that was like a year and a half ago.

I also have written a number of books. I wrote a book on the parent/child privilege which is a case that we were involved in here that actually made some law. That went through five printings over at the National College for Criminal Defense.

I did one many years ago on defending drug cases that went through a few printings too and I've written articles and stuff like that.

Q. Have you served on any of the Nevada State Bar committees?

A. When I first came to Nevada I served 1979 and 1980 if I recall—I was on the continuing legal education committee at that time and we did in fact set up a criminal law program that ran a couple of times.

Q. In Illinois were you active in the bar association?

A. The Illinois bar is set up with a house of delegates similar to the American Bar and I served one full two year term in the house of delegates back in I think '73-'74. That's a [57] long time ago. I don't really remember the years but I served two years elected to represent a district of the Illinois bar.

Q. With respect to Grady Sanders, when were you first retained by him to act as his attorney in the criminal charge?

A. Best of my memory I want to say November of '87. It was several months before the indictment was returned. It might have been December of '87.

Q. Prior to the time you were retained by him had you had any conversations with him with regard to the criminal charges?

A. Yes. Well—there were no criminal charges at the time but it looked as if they were inevitable. See, I knew Grady for a couple of years before representing him through mutual acquaintances and in fact when the story broke Grady was at the Alabama game. UNLV was playing Alabama and they were in Alabama or it might have been Auburn. I guess it might have been Auburn and I was called by Grady at home but I wasn't home so as a result instead of him getting in touch with me he got in touch with George Razabeck (phonetic) and George handled the [58] case from the day that the drugs were discovered missing all the way up until about the end of '87 when it became apparent that Grady was going to be indicted and then I got into the case.

Q. Prior to the time you were actually retained did you start following the press coverage part of which is reflected in Exhibit A?

A. Right from the beginning, from the very—I got to work Monday. I had a phone call that Grady had called me on Saturday. I think this was discovered on a Friday if I'm not mistaken but in any case right from the beginning before I even knew that Grady had called me I knew about this story.

I mean I just—yes. Once I learned that Grady was going to retain me if it became a problem, I started gathering materials on it, whatever was in the paper, whatever was on TV that came to my attention.

Q. To the best of your knowledge does the schedule of Exhibit A reflect the newspaper and TV coverage that existed on the Grady Sanders matter?

A. If I had—to the best of my [59] knowledge it does. If I had to—

Q. Except for Channel 13.

A. If I had to venture a guess there is more. More existed than what you see here. See, during part of this period I was in trial in another case. In fact, it was the Blustein case. It was in front of Judge Foley at the time when all of this happened and my memory is that there was probably stuff that got by me because I was involved in the other matter.

Q. When you were retained what was the stage of the proceedings at the time you were formally retained by Mr. Sanders?

A. Somehow it came to Grady's attention, and I think it was probably through Mahlon Brown or maybe George Razabeck that the indictment was imminent. It was going to be forthcoming rather quickly. Mahlon and George were both percipient witnesses so neither of them could really represent this man and in fact they both testified at the trial.

When it became apparent that an indictment was forthcoming and that it was going to be a RICO prosecution, a state racketeering prosecution, that's when I became involved in it [60] and my first efforts on Grady's behalf was to try to avoid the indictment by discussing the

case with the Clark County District Attorney and his chief assistants that were involved in the investigation.

Q. Obviously you didn't succeed.

A. I didn't do a very good job.

Q. What occurred then with respect to the proceedings and publicity that was ongoing?

A. Well, before they—the indictment was returned—there was a unique case. I got an awful lot of advance information. With all due respect the District Attorney's office and the Police Department were so full of leaks it looked like a spaghetti strainer and they brought me, police officers primarily brought me plenty of information about their case well in advance of the indictment so we were able to determine early on what the charges were going to be, who the—who most of the alleged victims were and a lot of the facts that occurred that were investigated by the Police Department that they had turned up so what I tried to do was I tried to get before the grand jury whatever was beneficial to Grady's position in the case and in [61] fact an employee by the name of Harold Sullivan we searched for him for months and ultimately—

Q. Let me stop you because I don't think we're interested in the prosecution.

A. Well, the point is that I did have a lot of input into the case early on.

Q. Prior to the time you gave the press conference were you able to determine whether what had been said in the press was having any effect on Mr. Sanders and his family?

A. Well, I think there's two parts to the answer. From a legal standpoint it was my opinion that as soon as John Moran and Bob Teuton, because Teuton was there when it happened when he prosecuted the case, as soon as they announced publicly that the two police officers Schaub and Scholl had passed polygraph examinations and that as far as the Police Department was concerned that was enough to clear them so that they were no longer suspects in the case and that Grady—they

made the announcement that Grady Sanders did not take a polygraph and would not, at that point in time to the public as a whole I believe Grady was indicted and convicted.

That was over a year or close [62] to a year before the indictment was actually returned by the grand jury. Repeatedly from that point forward up until the indictment whenever the matter was discussed in the newspapers on that day Ned Day for example and Jeff Garman (phonetic) and other people that wrote about it they would always mention the fact that the two police were the first suspects but they had been cleared by polygraph.

I know that that polygraph examination was totally inadmissible and there was no way to get that before a jury. Naturally you would like to have literate jurors so I had to presume that they read the papers and watch television and I saw that as being a big hurdle that I'd have to get over.

Now, from a personal standpoint as to Grady personally Grady Sanders had had multiple open-heart surgeries prior to this even happening so he was not a man in good health and his health suffered from it as did his pocket because he was also the owner of a 99 year leasehold on the ground in Jersey that Donald Trump's casino sat on and he was being called in for a licensing inquiry by the New Jersey gaming [63] people as a result of involvement in this investigation before the indictment was returned.

He ultimately lost that ground lease before we went to trial. They refused to license him. After we went to trial and he was acquitted of course it was too late to do anything about that. He already had—so, yeah, there were problems. There were unique problems, unique to this case.

Q. What prompted you to call a press conference?

A. More than anything else my fear of the publicity that had cleared the two police officers. I was convinced, and I'll say it now, I'm still convinced that one of those

police officers, the man that I named on the tape, perpetrated the crime.

It is very rare for a criminal lawyer to have an innocent client. I know you hear a lot of shouting about my client, you know, didn't do it but in 19 years at that time, excuse me, 17, 18 I had been in and around criminal defense for 18 years at that time and I can't fill a hand with people that I've represented that were truly innocent. [64] Grady was one of them and I was concerned about how I was going to get over this hurdle as I perceived to be the tremendous imbalance that the only person who is I was convinced did it and the only person that I could lay it off on from the standpoint of the defense had been exonerated by the Police Department and the media. That's why I called the press conference.

Q. As a citizen did you feel any obligation to bring the policeman's conduct to the attention—

A. The answer is yes but I think that—I don't think I'm a stranger to anybody on this panel when it comes to doing civil rights work. I mean I think other people know that I do that and it is part of my upbringing. It goes back to when I was still in law school so yes, I felt an obligation to bring it to the attention of the public that a policeman may have committed a crime and that someone else was going to suffer for it.

Q. Have you ever given, held a press conference in any other case?

A. I cannot recall ever setting a [65] time and place and calling the media to that place at that time for purposes of giving a press conference. In fact, I mean there's no question I've talked to the media people a lot over the years but to hold the press conference I don't remember ever holding one. I think that's the reason that I did the work I did the night before.

I wasn't sure what I could say and not say at a press conference having never held one before, a formal press conference.

Q. What did you do the night before the press conference?

A. The night before this—again, let me put this in context. Okay? The indictment was returned and Grady and I went to Judge Leavitt's courtroom even though we weren't even supposed to be there. It's not on a calendar when an indictment is returned. The D.A. takes it from the grand jury, brings it to the chief judge and has a warrant issue. It's an ex parte proceeding.

We got advance notice of it so Grady and I were actually in court the day of the indictment. At that point in time the media did not know that it was out yet. There were no media [66] people in the courtroom and Judge Leavitt set a time for the arraignment and assigned the case to Judge White's courtroom.

I knew that once that became public knowledge that the media was going to be all over that courtroom because the next day after the indictment was returned it was all over the paper so the night before because I knew that the arrangement was going to take place the next day Gene Porter, Wenlee Jensen, Wenlee works for me, and myself—

Q. Gene Porter is also an attorney?

A. Gene Porter is an attorney. He has offices with me and has been working with me since 1981 I guess or '82. The three of us sat in the law library in my offices and went through the books and we researched this issue.

Now, I've collected materials on it in the past. We also did a West law search, by the way, on this issue because I knew that I was—I knew that there were rules that governed pretrial publicity. What I did not know is how those rules had been applied in the past in any given factual situation and I knew that I had to say something.

[67] Q. Before you go to that Exhibit D is that the, a copy, a Xerox copy of the materials you collected?

A. It is except there's one thing missing here. There's a book written by John Wesley Hall who is a lawyer from Arkansas that deals specifically with the ethics of

the criminal defense lawyer and I'm sure that I reviewed that book and I see that it's not in here.

Q. Other than that Exhibit D reflects the materials you put together the night before the press conference?

A. Yes.

Q. In viewing those materials with Wenlee and—I'm sorry. Who else?

A. Gene.

Q. Gene Porter. Gene Porter. What conclusions did you come to?

A. Well, the first thing that I came to conclude is there were—it was very important as to how long before the trial any kind of a statement is made. That's the reason that I did not make any statements before the arraignment. I needed to know when the case was going to be set for trial and Judge White on the [68] date of the arraignment which I believe was February 4th or 5th set the trial for August the 8th which gave us a full six months before trial.

There were cases that I had found in my research that held that two months and four months before trial were so far ahead of trial that there was a presumption that the statements, whatever they were, and they were far worse than what I said, whatever they were, they were not likely to taint the fairness of the proceedings so I thought first let's make sure that we've got plenty of time before the trial is scheduled because what I'm going to say I'm going to say today and I'm not going to talk again and that's the way we did it.

Secondly I went through the rule and frankly I must tell you I'm on the wrong side of this case but I still do not understand what I said on this tape that is being complained about. Okay? I must tell you that. I wanted to have a bill of particulars. I thought we were going to get one but I still don't know what I said that was wrong.

I know that there were certain things that obviously you could not do and the [69] tape, the videotape reflects what I thought you couldn't do. You cannot go count by

count and talk about the specific credibility of each individual witness. You can't talk about things that are not admissible in evidence which again was my whole reason for holding this press conference because something had been talked about a lot that was not going to come to the jury's attention.

By and large I came to conclude that what I said at this press conference the next day was proper and I still feel that way I must tell you in spite of the fact that I'm being looked into at this point in time. I don't think I did anything wrong.

Q. What do you think your obligation is to your client when he's been subjected to this kind of pretrial publicity, counsel?

A. I think that depends on what the client is and what the facts are quite frankly. There's no question that I owe to myself and to my feeling about myself I owe it to bring all the vigor that I can to defend anybody that I chose to defend. I'm in private practice. I'm not a [70] public defender.

I don't have to defend anybody. When I decide to defend somebody, I give it my all and I think I owe him that and if it means that a guy is wrongfully accused as Grady Sanders was, then I see it as my role to say so and if it means that improper methods are being used by the prosecution testimony, law enforcement testimony, the prosecutor and the police to poison a perspective juror venire then I have to fight back and they did that in this case.

Q. In addition to the prospective venire effects what role, if any, did the effects on your client's economic and social well being have to do with the press conference?

A. Candidly, Neil, in context it wasn't anywhere near as important. It is important and it is in my opinion a good enough reason to hold a press conference to say certain things. Okay? But in terms of this particular press conference what you see on that tape I cannot honestly—

I mean I had a lot of empathy for Grady and I have to say that I was very zealous in my approach at defending him and I [71] wanted to win for him because I thought he was innocent but it was because he was wrongfully accused more so than the impact it was making on his pocketbook and on his emotions although there was a very great impact and it did weigh somewhat in my decision.

Q. You mentioned an economic factor of the lease in New Jersey. What about socially, what effects did it have on him?

A. Well, I knew Grady Sanders socially. He wasn't a buddy of mine but I knew him socially and how do I put it? When someone is a professional criminal a criminal accusation really doesn't get in his way socially. They expect it. It comes with the territory.

Grady Sanders wasn't that and it effected him as much as it could effect any person who tries to live a legitimate business life the same way I think that it would effect anybody sitting in this room. He was demoralized and had a feeling of dismay and anybody who knew him supported him but many people took it as an opportunity to take a cheap shot at the guy.

Q. Did Grady respond adequately to these charges himself?

[72] A. How do you mean that?

Q. From—

A. You mean in the paper?

Q. Correct.

A. Through the media. No, I don't think so. I really don't think so.

Q. What limitations does an accused in a criminal case face when he tries to respond directly?

A. He will throw gas on a fire. He will make it—he will open up himself to making a public statement that later on he's going to have to swallow and besides that he's not as articulate. Nobody, no client that I have ever represented that I can think of would have been

able to articulately respond to the facts in the context of this particular case, the one that you have before you. I just don't think so.

Q. What happens if the accused such as Grady Sanders gives a statement in the press to his constitutional right against self-incrimination?

A. He waives it.

Q. Does that impose a realistic limitation on his ability to respond for himself?

[73] A. I would—as a lawyer I'd say yes.

Q. And as a lawyer what's your obligation in your opinion after research and viewing the coverage that had existed before you gave your press coverage to your client?

A. Is to tell him that I will be his mouth piece as bad as that term may be taken and swallowed. That is what I have to be in the context of a case like this. I must speak for him. I am his advocate. And he is not to say anything.

Q. The things that were stated by you in the press conference as viewed on the videotape here, was there anything you said in that conference that you did not say in that—in the trial of the Sanders case either an opening statement, closing argument?

A. Nothing, absolutely everything that is contained in that videotape came before the jury and was admitted into evidence one way or another at the trial of the case and I use that as my guideline in terms of what I could say and what I couldn't say at the press conference.

Q. So that everything that you said [74] was a matter that properly was allowed by the judge to go to the jury as a proper consideration?

A. Yes, and if I may take just a little bit of liberty, when the trial was over with and the man was acquitted the next week the foreman of the jury phoned me and said to me that if they would have had a verdict form before them with respect to the guilt of Steve Scholl

they would have found the man proven guilty beyond a reasonable doubt.

Q. The voir dire selection of the jury you obviously participated in that.

A. Yes.

Q. Was there a voir dire conducted with respect to the issue of pretrial publicity?

A. Yes.

Q. What was the nature of that voir dire, what was the result of it?

A. Well, the nature of the voir dire was pretty extensive. Both Judge White and the attorneys privately individually were permitted to question the veneering panel and the result was, if I may summarize it, the only thing that anybody remembered about the case that is the cops were the first suspects and that a polygraph [75] was passed which is exactly what I was afraid of.

Nobody remembered anything about me, never heard of me, didn't know anything about—you know, none of that. So apparently I wasn't very effective in my press conference anyhow.

Q. Was there any indication that an impartial jury couldn't be impaneled in Clark County for this trial?

A. On the day of the trial?

Q. Yes.

A. I was worried about it because with the way the voir dire was conducted when someone did speak up and talked about the police were the original suspects but they had been cleared, you know, it was in the presence of all the other prospective jurors so now if they didn't know about it to begin with, they knew about it now and we asked Judge White for individual voir dire and he refused it as most judges will do so I felt—even when we picked that jury I felt that we were going to have a hard time dealing with the pretrial publicity, yes.

Q. From the point of view of the prosecution that is?

[76] A. Yes.

Q. Is there any indication in your recollection of a problem from the point of view of the statements you made interfering with the trial?

A. Nobody ever heard of me or anything I ever said. No, there was no indication that somehow I prejudiced this jury.

MR. GALATZ: No further questions. Thank you.

THE CHAIRPERSON: Cross-examine, Mr. Howe.

CROSS EXAMINATION

BY MR. HOWE:

Q. Mr. Gentile, at the time that you held the press conference who were the expected prosecution witnesses to your mind at that time?

A. Well, I knew for sure they had to call Steve Scholl and Ed Schaub. I knew about seven out of the remaining—let's see now. There were two so-called victims that I did not know about at that time. I knew about the remainder. I don't—for me to tell you right [77] now, Mr. Howe, which ones I remembered—I mean which ones I knew about and which ones I didn't I can't remember but there were two that came as a surprise to me. Okay.

Q. This Steve Scholl and Ed Schaub were the police detectives?

A. Yes, sir.

Q. And you knew at that time or you expected, fully expected that they would be prosecution witnesses?

A. There was no way to prove the chain without those witnesses. They had to have those witnesses.

Q. And the so-called that you referred to them I believe as other victims were other people that supposedly had things taken from the storage facility?

A. That's correct.

Q. And there were a number of those who you likewise expected would be necessary witnesses for the prosecution?

A. If they were going to prove those counts.

Q. I believe you testified that your primary reason for calling the press [78] conference was your fear of the publicity that had cleared those two police officers, that being Steve Scholl and Ed Schaub; is that correct?

A. Uh-huh.

Q. So was the purpose of your news conference then to counter that?

A. Absolutely.

Q. To present the other side?

A. Absolutely. I felt it was fair rebuttal given what they had started.

Q. All right. Did—in your news conference do you think it's fair to characterize your references to particularly Steve Scholl who you mentioned by name a number of times as questioning his character credibility and reputation?

A. Now you're using three terms there.

Q. One at a time.

A. I don't think I said anything about his reputation.

Q. Okay.

A. Okay. I think I may have made—I think you can probably construe what I said as commenting on his character. Okay. [79] Because you certainly can infer that I suggested that he used drugs. Okay. I did more than that at the trial. He admitted he used drugs at the trial.

Q. And you questioned I think you—I think it's safe to say that he inferred that he had in fact stolen these drugs?

A. I didn't infer. I said it, didn't I?

Q. Which I believe would be considered to be questioning his character as well I would say.

A. Well, you know, you could say that.

MR. GALATZ: More theory of defense.

THE WITNESS: You could say that but, you know, that was the defense in the case and that's what subsection A talks about the way I read it.

MR. HOWE:

Q. All right. You referred in the videotape I believe to some audio and videotapes which were in your possession from the Vacarra case.

A. That's correct.

Q. Were those tapes admitted in the [80] trial?

A. And they were never showed to the media. They were ready to be admitted at the trial. Okay. If I needed them but once Steve Scholl admitted to his—he admitted to specific drug uses. Okay. Once he did that I didn't need to use them any more. I mean that would have been like beating a dead horse so I mean but they were there.

They certainly would have been admissible because they were Steve Scholl on the tapes. I chose deliberately not to introduce them because by that time I thought I had the case won.

Q. They were not admitted at the trial?

A. They were not even offered.

Q. All right. Was there evidence presented at the trial of the belief of the FBI as to the guilt or innocent of Detective Scholl or any other law enforcement officers?

A. There was an FBI agent called to give testimony at the trial. I don't know if you can—you'd have to read his testimony. I don't know if I can answer that. I don't know if I can answer that yes or no. All right? I know that I [81] didn't bring that up. I know that was a question put to me on the tape, not something that I volunteered.

When I say I didn't bring it up I mean I didn't bring it up at the press conference. If you'll recall from the tape the question is put to me I believe by George Knapp and I just sidestepped that question because of Ray Slaughter.

Q. I think you possibly indicated that you agreed with that opinion?

A. Yeah, okay, but I certainly didn't bring it up.

Q. Okay. Do you recall the references on the videotape from the press conference, the reference to the other, as you're referring to him, the other victims and the

statement that four were known drug dealers and convicted money launderers and convicted drug dealers. Is that an accurate statement of the comment you made?

A. That's an accurate statement.

Q. Do you think it would be safe to characterize that as a reference or a comment on the character, credibility or reputation of those [82] witnesses?

A. No, I don't, because I didn't name who they were. In fact it was precisely the reason that when the follow-up question came from Allen Clovin (phonetically) who was working for the R-J at that time I told him I could not go by it count by count and identify each and every one as an individual .

The way I read that rule you can speak in terms of part of your defense is that the witnesses do not have good character for truthfulness as long as you don't single out one at a time.

Q. And do you think that characterizing four witnesses out of six or seven and making specific references such as they're known drug dealers, convicted money launderers and drug dealers, do you think that's proper?

A. I do. You can bet that the prosecutor would have done it.

MR. HOWE: That's all the questions I have.

THE CHAIRPERSON: Redirect, Mr. Galatz?

MR. GALATZ: A few questions.

[83] REDIRECT EXAMINATION

BY MR. GALATZ:

Q. Did Sheriff Moran put before the press character evidence as to the good character of the detectives involved in this case?

A. He sure did.

Q. Did Sheriff Moran put before the press evidence of the Officer Scholl's passing a polygraph test?

A. Both of them, Scholl and Schaub he put that before the media and so did Lawrence Stevens who was their

immediate supervisor at the time and so did the—who was the other guy, the guy that just got in trouble with Judge Huffaker? I forget his name. I don't know. But you know who the guy is. The guy that had the Haupt murder case. What's his name?

Q. Okay.

A. Tom Dillard. So did Tom Dillard.

Q. There was a question about the FBI's view. Was the FBI's view of the proceedings made clear in the press coverage preceding your statements?

A. Definitely. In fact that's what [84] Ned Day was pounding away at. He was trying to—and as I recall so was Jeff Garman.

Q. What was the FBI view as expressed in the papers?

A. That they felt that the police were involved in the theft.

Q. And how did this relate to the Slaughter case?

A. Well, that depends on—you know, are you asking me what the media says about it? It's in there. Okay. For me to say to you how it related, it's somewhat convoluted. Okay? I mean there's no question that it was—they believe that Ray Slaughter passed both Scholl and Schaub on the polygraphs. Okay. And they wanted to find a way to make Slaughter admit that and they set this poor guy up by having him buy a gram of cocaine for some pretty woman and that's the bottom line to it all thinking that they could twist him.

I don't know if you understand what I mean by twist but it means that they could make him testify that Scholl and Schaub were in fact, you know, really didn't legitimately pass the polygraph. You got to remember that Slaughter [85] was also the guy that passed John Moran and Schaub and Scholl did not take a Metro polygraph. They took an outside polygraph so there's—never mind.

Q. The witnesses who were involved with laundering money, dealing with drugs, was this evidence adduced at

the trial and argued to the jury both in the opening and closing arguments?

A. Absolutely.

MR. GALATZ: I have no further questions

THE CHAIRPERSON: Any questions from any of the panel members?

MR. URGA: I have a couple.

EXAMINATION

BY MR. URGA:

Q. Mr. Gentile, what I'm concerned about is creation of a situation because you feel the police or somebody that's not an attorney says something that gives you a right to say something back. How do you in your opinion control the ability to have a free unobstructed trial if both sides are doing it regardless if the police or whoever is saying it's wrong that you have your [86] press conference, they call a press conference, you call a rebuttal press conference?

A. Mr. Urga, I don't think I understand your question honestly.

Q. Well, I'm asking how do you weigh when you said you'd be able to counter the arguments that were coming out from the sheriff and the other people with the ability to have a free trial, a trial that's not prejudiced by this pretrial publicity?

A. Okay. I think there's two elements that are necessary for it to—for both to be able to happen and I think that's what this is really about.

It's not a question of a lawyer can't say. It's a question of he can't say it if it's going to prejudice something. I think that it has to be done far enough in advance of trial so that, so, in other words if it happened in the middle of the trial I think you've got a big problem on your hands. All right.

In case it comes to the attention of a juror, if a juror is it comes to his attention now all of a sudden you got

a mistrial on your hands so I think that the length [87] of time before the trial actually takes place is important.

Secondly, it depends on the content of what the law enforcement testimony says. Let me give you an example. It so happens that there was a—if I'm not mistaken—I'm almost sure that Bob Teuton who was the prosecutor in the case was in fact present when John Moran made this public statement that these two guys Scholl and Schaub passed the polygraph.

Well, now it's not just a policeman saying it. It's a policeman saying it with the District Attorney's office being there. Now, one of the canons, one of the rules of professional conduct says that you can't do through an investigator or what you can't do yourself. Okay? And that's what happened here. So if they started so to speak I'm not saying that I like to respond. I'm saying that I have to respond and if it comes close—if it comes close to being an ethical violation, then all I could tell you is that it's an ethical dilemma at the time and my allegiance is to my client.

Q. But from what I saw and so far have seen nobody has indicated that your press [88] conference or their press conference or anybody's press conference effected this trial whatsoever; is that correct?

A. I think if you read the voir dire—

Q. They have vague references. I looked at it.

A. Yeah, you know, but you got to sit through a voir dire.

Q. Oh, I understand. But what I'm saying there's been nothing to indicate that a juror said, "Yes. I remember this statement and I'm prejudiced," or, "No, I'm not prejudiced." Am I correct?

A. Yes.

Q. So what—

A. I think, you know what? I'm not sure if the general—you know the part of the voir dire that takes place before they actually seat people. I don't know if that was transcribed because a lot of people raised their

hands at that first go round that they had heard about the case. I think those were cut out.

Q. But the trial that you saw here you had a jury even though you had that problem [89] with Judge White you said en masse was a fair trial. I mean you had a good jury. Obviously you got a good verdict.

A. It worked. Thank God.

Q. What I'm getting it [sic] is what justifies you saying it's four months, six months before I can try my case with the press because the police are trying their case with the press?

A. I guess—

Q. And I think that's what you're saying.

A. I guess I'd have to lay that off to experience. You know, this isn't the first time I've been involved in a case where there's been a lot of bias in the media against my client but it is the first time I ever called a press conference to counter it. I mean this particular case was unique. I really felt that the whole county from which a venire he would be pulled at least as of February of 1988 had been poisoned. Okay? And all I was trying to do was even it out. I may have misperceived the whole situation. I'll admit that.

Q. Well, let me carry it one step further. You've got a reputation in town as a [90] good criminal defense attorney. What is to stop you the next time saying that, "I call these press conferences very rarely, but when I do my people are innocent." Now, what's to stop you that from [sic] the very next time saying that and maybe making a case even worse than whatever the police do?

A. I suppose only my own self-control and my own good faith.

Q. Do you believe that the State Bar has a right to regulate that type conduct?

A. Yeah, I sure do. I mean I'm not—I'm not saying you can yell fire in a crowded theater. I'm not saying that. I'm not trying to establish an immunity in general. Okay? But I think you have to take into consideration

what happened in the 12 months prior to my press conference.

If it wasn't for what happened in the 12 months prior to my press conference, I can assure you that my experience tells me that you don't make a case a public case to save a defendant. If it's not in the newspapers, you want it to stay out of the newspapers.

MR. URGA: I have nothing further.

MR. MARTINEZ: I've got a question.

[91] EXAMINATION

BY MR. MARTINEZ:

Q. That was the actual press conference. What was the actual press release?

A. I didn't make one.

Q. Was there any of that tape disseminated to the public by Channel 8, 13 or 3 or any other?

A. Parts of it, parts of it. You know, little segments. That's the problem. That's why what you read in the newspaper was out of context. I'm really glad that we had the tape. At least from my point of view. I'd rather have the tape then [sic] not be able to prove what it was that I said and did.

I'm particularly glad we have it because it—I don't have to corroborate myself that I did the—that I looked into it the night before. I did it. All right. I'm—I'm glad we got the tape. I may get hung by it, you know, if you don't agree with me but at least it's what I said and not what someone else said I said.

MR. MARTINEZ: I have nothing further.

[92] THE CHAIRPERSON: Any other panel members have questions?

MR. GALATZ: I have a few questions.

REDIRECT EXAMINATION (continuing)

BY MR. GALATZ:

Q. Does it make any difference to your client whether the D.A. or the police make the statements that are improper or accusatory to the press?

A. No, it doesn't make any difference to my client and I can tell you that the entire body of civil rights law and constitutional law treats the two as one. There is actually a buzz word now in the criminal law that talks about the prosecution testimony. It was coined in the Vinciala Burneil (phonetic) case, the prosecution testimony. They're considered to be two sides of the same coin.

Q. The law indicates several other views on this subject. The Nevada rule is the ABA code and that's the most restrictive view; is that correct?

A. Yes.

[93] Q. There is another view which is the ABA standards of criminal justice fair trial and free press standards and these refer to the present danger, clear and present danger test, correct?

A. If I understood Rule 177 better—okay—I might not agree as to which is the more restrictive and which is the least restrictive I've got to tell you because having read 177 and tried to understand it and tried to apply it and having applied it in a way that I thought was legitimate it appears that at least some people think that I didn't. Okay. So I'm not sure. That would be the best answer I can give you.

Q. And then there's another test at least that is the clear and present danger in fairness to the trial?

A. Yes.

Q. And then there's another position which is phrased by a small national bar association American Trial Lawyers with some 40,000 odd members that says there should be no restriction on defense counsel's right to address the press; is that correct?

[94] A. Yes.

Q. There's a body of law that agrees that there should be no restriction at all on defense counsel that the right to free speech and press are totally open and the only restrictions would be on the government?

A. That's right, it is.

Q. You indicated confusion in applying Rule 177. Could you explain what you mean by the confusion. That's Exhibit E.

A. Well, I think it's self-evident that I'm here but I'll give you an example. How—3-A let's talk about that. The general nature of the claim or defense, what does that mean? How general or how specific can you get? The only thing that I could do to make that clear to me was to read some cases the night before and I thought I applied them and I was discrete.

There were things that I would not answer because I thought they were too particular. And this—there's another subsection. You know, how do you take 3-A and set it off against 2-A? Or how do you take 3-A and set it off against 2-D? How do you do that? I don't know, and I've been practicing criminal law [95] since 1972 as a licensed practitioner and a couple of years before that working with pro bono groups. I don't know. I have a feeling, however, that I've probably read more law on it than any other criminal practitioner did before he held a press conference.

Q. You mentioned the role of time. What was the significance of time in your opinion?

A. Supreme Court says that the United States Supreme Court and the Court of Appeals of New York—there were a couple of cases that were decided and they're in the material where the United States Supreme Court in one case held that a comment that about a confession that was ultimately inadmissible but the prosecutor made two months before trial that two months before trial was a long enough time before trial so that the prosecutor—so that it did not present a danger and the prosecutor

should not reasonably know that it might not present such a danger.

The New York Supreme Court case, and again it's in there, talked in terms of a defense lawyer making a statement four months before trial and they held that four months before [96] trial was so far ahead of trial that the lawyer did not violate any ethical ruling because it did not present a danger of actually tainting the jury.

The focus seems to be on the clear and present danger standard even though it may not be articulated in the rule itself. You know, I mean sometimes I guess you can get in trouble and I'm pretty clearly in trouble. Sometimes I think you can get in trouble by knowing too much about what the cases say because then you're suddenly relying upon something that somebody might say didn't count.

MR. GALATZ: No further questions.

THE CHAIRPERSON: Mr. Howe?

MR. HOWE: Nothing further.

THE CHAIRPERSON: Should we take a five minute break.

(Whereupon Dominic Gentile was excused.)

(Recess taken.)

THE CHAIRPERSON: Okay. We can go back on the record. During the break there was a discussion among myself and counsel and a proposal was offered which is likely to save some time [97] during the balance of the proceeding and I would appreciate it if counsel could make that proposal on the record so that the panel could consider it.

MR. GALATZ: We are trying to figure out a way to get three witnesses with different backgrounds before you in something under the hour and 15 minutes or so that it's taken thus far and what I suggested was that we briefly qualify each one so you can get something of their

diverse backgrounds without dragging qualifications out forever and then trying to ask a couple of summary type questions about their view of Rule 177 and the propriety of Dominic's conduct and basically the reasons for their views which might be the shorthand way of getting into the substance because their views, I can assure you, are much like you've already heard from different backgrounds and that was the suggestion of trying to find a way to get the material to you but in as quick and brief a form as possible.

THE CHAIRPERSON: Mr. Howe?

MR. HOWE: In the interest of saving time I'm willing to and based on the nature of the testimony that I expect to hear I'm willing to [98] waive the question and answer form, let the witnesses testify in narrative form. I have no problem with that.

I have stated to Mr. Galatz my feeling that I had an objection to the witnesses testifying in the form of an opinion as to whether or not the particular conduct of Mr. Gentile violates the rule because I think that's invading the province of the panel.

If the chairman will take that objection as a continuing objection and the panel will accept that testimony and let that with the panel's own determination as to what weight to give it as an opinion, then I'm willing to make it as a general objection, allow the witnesses to testify in this form.

MR. GALATZ: On the other side of that my understanding of our rules of evidence which apply to this is that an expert can give an opinion on the ultimate issues and it can properly give the opinion since they're all attorneys which would qualify them on this particular subject matter. The weight of any expert's opinion is always for the trier of fact to determine regardless of what.

THE CHAIRPERSON: Very well then. We will [99] permit the examination to go forward in the manner in which counsel has proposed without trying to

rule prospectively on any objections. The chair disagrees with Mr. Galatz's interpretation of the rules of evidence that being that a properly qualified expert can give an opinion as to ultimate facts.

I mean these witnesses are qualified and they will be able to express an opinion. The weight to be given to the opinion based upon their qualifications and the underlying factors would be for the panel.

MR. GALATZ: Again so you understand I am going to go through the qualifications in a short form because I'm trying to shorten this.

THE CHAIRPERSON: I understand that.

MR. GALATZ: Okay. Should I call one of them in? Let's.

THE CHAIRPERSON: Please do.

MR. GALATZ: Let's get the lady first so she can get out of here.

JANET ROGERS,

having been first duly sworn to testify to the truth, the whole truth and nothing but the truth, [100] was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GALATZ:

Q. Will you state your full name for the record, please?

A. Janet Frazer Rogers.

Q. Mrs. Rogers, will you tell the panel briefly what your training and experience has been as an attorney.

A. Well, I'm a graduate of the University of Tulsa Law School. I'm a member of the Oklahoma bar since 1974, the Nevada bar since 1978. I was with the I guess public defender's office, the Small Business Administration in Washington, D.C., and in, on January 1st of 1979 I went to work for Channel 3 as their general counsel.

I had a private practice as well until about 18 months

or two years ago when I decided that I really had to devote my full time and attention to the broadcasting business. We were expanding and so I terminated my private practice.

Q. In the area of your practice as [101] it relates to the television station, what exposure do you have to the problems of free press?

A. Well, I'm a member of the reporters committee on first amendment rights. I've been published in their magazine. I'm a member of Comic which is kind of a loose amalgamation. It's the Committee of Media In-house Counsel. There are 20 of us who meet once or twice a year. The next smallest company is the Milwaukee Journal so it's people like the general counsel news week [sic] and NBC and ABC.

And then on a day-to-day basis I deal with the news department. I clear and follow investigative journalism. I review ads. I watch out for defamation. I review stories on demands for retraction which we get once in a while. I do personnel matters, that sort of thing.

Q. You've reviewed the videotape of Dominic's press conference which is Exhibit 4. You've reviewed the press clippings and I think you've actually reviewed all of the TV 8 videotapes on the Sanders matter.

A. None of the 8. Part of the TV 3 [102] but not all.

Q. I'm sorry. I meant 3. I said 8 because it was first. 3. You've looked at the transcripts or the portions of transcripts Exhibit B on the voir dire, opening statement and final arguments of Dominic in the Sanders case; is that correct?

A. That's correct.

Q. Okay. Based upon all of those materials and your experience, training, do you have an opinion as to the propriety or impropriety of Dominic's conduct as reflected in Exhibit 4, the videotape press conference.

A. Well, I think my perspective is different. Although I'm a lawyer by training and been practicing for

15 years my perspective—yes, I do have an opinion on it. I assume you want me to state the opinion.

Q. Yes. We are trying to—

A. Okay. I think that if you construe the rules in any way that would find anything wrong with the statements that you are not only chilling free press. I think you're going further than that. I think you are encouraging slanted reporting. I think you are [103] encouraging prejudicial reporting. I think if you take a very strict construction of that, those examples set out in Section 2 I think have occasion [sic] or ordinarily this and this and this are forbidden, if you—right.

Q. That's Exhibit E is the rule.

A. Okay. Part 2 of the rule where ordinarily the statements, these statements are likely to have the effect. Okay. And then it goes A through F. If you construe that very strictly and very broadly and then paragraph 3 which says regardless of what we said in paragraph 2 you can still discuss the general nature of the claim or defense and the information contained in a public record, if you construe that very narrowly while you're construing the first one very broadly you create a situation where the press can't do anything. I mean chill, maybe frozen and I think prejudicial. I think that is—well, prejudicial and as I say I speak from a different background.

Q. Talk to the panel.

A. The First Amendment and the Sixth Amendment and all that is in my view more applicable when you're talking about what [104] Mr. Gentile may have a right to say or what Mr. Sanders may have a right to expect in terms of the Sixth Amendment but from my perspective I'm more interested in what the public has a right to know.

It's a common law right. It pre-dates the Constitution. It stems from the same basic considerations as the First Amendment but the recipient of the common law right to know is the public as a whole and the press

specifically is charged with informing the public [sic] the things that they have a right to know.

The Supreme Court has said that the reason—the reason for the common law right beyond the Constitution is specifically because the public needs to watch government officials. They need to watch the activities of institutions. They need to watch facets that control their life that they may not have access to if the media doesn't exercise the public's right to know.

In fact it may be near and dear to me because I argued in one a case of first impression and in the Ninth Circuit in '86 and it was exactly on that common law right to know. And [105] in this case I think the, that the public had a right to know if the police were involved in it what the allegations had been.

I think that the way that news gathering happens [sic] that if you don't allow a lawyer to say the really rather circumspect things that were said here was not I don't find it to be arguing of a case or making, you know, or overstating the evidence which never really, you know, turned out to be but a general—I think it's a general nature of the defense which I think is what it was.

Then what you have is a bunch of reporters who are basically kids who you have out on the street who are definitely not lawyers who go out and try to find out what to report, how to fulfill the public's right to know. What do we tell the public about what's happening, [sic] and they go to the sources that they know of to go to and they go to the indictment because they can get that and then they go to the police because they have contacts there.

You know, we do things with the nasty boys every day. We do things about the prostitution and the drugs on the street. So Dan [106] Burns knows policemen and if Dan Burns has a question about a case, he's going to call some of the policemen who are his friends and they're going to tell him that side of the story and they do tell him that side of the story and we're going to put it on because there is a right to know and the public has a

need to know and I find it actually kind of morbid and I have personally argued with my news director to try to cut down on some of the crime coverage and, you know, we have crime watch or whatever and we have all —and I get really sick of having the first four stories every single night be somebody getting stabbed or a 7-Eleven getting robbed but that is what our research shows people want to see and if that's what they want to see, that's what we're going to put on and it's more so by the way when it's not some, you know, known drug dealer but it's somebody who is a respectable person.

It's like the clay feet syndrome. You know, people eat that up. They love it. It's there but for the grace of God go I and hearing that some scum bag got picked up is not real interesting. Hearing that some guy in a suit got picked up now that's juicy stuff.

[107] So what are we going to do? Not cover it. All we can do is read the indictment, read the Information, talk to the police people, policemen, that's all you're going to hear. So I think that it doesn't only chill it. I think it produces prejudicial and slanted news coverage. I think as to the specific effects of in this case the two statements made that seem most controversial to me or seem to me in reading through the stuff that it was focusing on I think that the effect is numb.

Our research shows us that the average viewer has to hear an ad three times a week to remember it. Certainly one comment, you know, is not going to do it even if the viewer happened to hear it so I think that that is probably the answer as to when he is.

He said something to the effect of "I think my client is innocent" or "The evidence will prove my client is innocent" or whatever, I don't think on voir dire these people remembered hearing it. I also don't think that it would prejudicially impact at all.

I think there was no probability, much less a substantial probability [108] of prejudicial influence because I think people think that if you didn't believe in your client or if you weren't at least going to say you believed

in your client I don't think they'd think you'd be up there so I don't think any of them thought two hoots about that.

As to the and [sic] the police are, you know, suspects in the case or I don't know the verbatim quote out of the videotape but I think there again it had no effect, not a substantial effect. I think it had no effect. In the first place it wasn't the first time that this had ever been, the idea had come up.

My recollection was that it was an R-J story a year before this that the police are [sic] suspects already. Now, this is hot news. This is something people might remember and this is repeated by more sources than just Mr. Gentile. This is not something new when a year after the R-J story he mentions it again and he mentions it as being part of his defense, his general plan of defense. And also by the way part of the ongoing investigation that was the other side. Okay.

I think then in voir dire that [109] the jurors said no, that that would not have any impact on them and I think you have to—I think that the whole system of being judged by your peers goes down the drain if you don't at least go in with the idea that the jury's going to be honest and then I think that throughout the course of the trial the opening statement—I did not read the trial transcript but I read the opening statement.

I read the closing statement and I mean that is what the defense kept pounding and pounding and pounding in to the jurors is Mr. Sanders did not do this. It was the police who did this. So I don't know how a remark made prior to a trial would have any prejudicial impact on a trial where the whole thrust of the defense is that it was police who did it.

I guess I've gone on too long. I don't—

MR. GALATZ: We're trying to get a narrative so we can open you up for questions and why don't you stop there and if there's cross-examination questions.

THE CHAIRPERSON: I take it then Mr. Galatz is through with his questioning. [110] Mr. Howe, anything?

MR. HOWE: I have no questions.

THE CHAIRPERSON: Any questions from the panel members?

THE WITNESS: I will just ask you to seriously consider the kind of predicament you're leaving us in if you forbid the defense from talking. If you so broadly construe paragraph 2 and so narrowly construe the exception about the general defense because I do—we have a problem when you have a reporter who only gets one side of the story because we don't allow our reporters obviously to make up what the defense will be and we won't let them speculate.

So what are they going to do? It would chill speech if it were something that you could just say this is not of interest to the community so since we can't get both sides we're not covering any side but the real world doesn't work that way because Channel 3 is not going to say that when Channel 8 does it as the lead story.

THE CHAIRPERSON: Okay. Thanks very much.

THE WITNESS: Thank you.

[111] THE CHAIRPERSON: The witness may be excused.

(Whereupon Janet Rogers was excused from the room.)

EDWARD KANE,

having been first duly sworn to testify to the truth, the whole truth and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GALATZ:

Q. Will you state your full name for the record, please?

A. Edward Kane, K-A-N-E.

Q. Mr. Kane, will you tell the panel, please, your educational background and your experience as an attorney.

A. Yeah. I'm an attorney. I graduated from St. John's Law School in New York in 1972. I came here to Las Vegas in 1973 with the United States Air Force. I served four years with the Judge Advocate negligence office at Nellis until '77. Thereafter I served three years [112] at the Clark County District Attorney's office, moved to Reno in 1980 to take a post as assistant United States Attorney in the Reno office of the United States attorney. I stayed there about 15 months.

At the end of 1981 returned here to Las Vegas to take the job of Chief Assistant United States Attorney in the United States Attorney's office here in Las Vegas where I remained until July of 1986 at which time I entered private practice. I'm in private practice now and partnership with B. Mahlon Brown who is a former United States Attorney here in Las Vegas in the firm name is Brown & Kane.

Q. You've reviewed the videotape of Dominic's press conference Exhibit 4. You've reviewed the voir dire, the opening, final arguments and the press clippings and coverage of Exhibit A and other items that are referred to were Exhibit B I believe?

A. Yes, I've reviewed all those materials.

Q. Over the years you've had a little experience I would imagine with press and TV coverage in criminal matters.

[113] A. Quite a bit.

Q. Can you tell the panel, please, what your views are on the effects of Rule 177, the meaning of Rule 177 as it relates to criminal cases and the propriety or impropriety of Dominic's conduct. And we are asking for a narrative, yes.

A. Okay. First of all as a prosecutor I have witnessed first hand and I have participated in the kind of damage that the publicity surrounding an indictment can do to someone who is accused of a crime. We lawyers are used

to legal instructions where juries are informed that an indictment is only an accusation.

It is no evidence of wrongdoing on anyone's part. That is technically true in a court of law. It is nonsense to tell public at large. The public at large views an indictment as far more than simply an accusation. Even a person who is eventually vindicated following a trial will always suffer with the stigma of indictment.

As a government attorney I understood that. As a government attorney I didn't have any problem with that because the [114] people that I was prosecuting I felt were bad people and if their reputations were damaged because they were indicted, so be it. I didn't feel that it was anything more or less than what they deserved.

I also learned as a government attorney that there were and are many other ways to get damaging information about a defendant before the public eye without violating any rules or anything else and to do damage to that defendant and again I saw nothing wrong with that and I did it as a government attorney.

Probably the most common way that any prosecuting attorney will tell you is a bail hearing. At a bail hearing if you have any damaging information about a defendant that you want to get before the public but it would be improper for you to call a press conference and comment on. You can certainly raise those items in good faith as long as you believe them to be true as arguments at a bail hearing and again as a prosecutor I saw nothing wrong with that. I was doing bad things to bad people and they were the things that they deserved to have happen to them.

The point of all this [115] background is that our system is set up in such a way that to say that no damage is done to a person who is indicted because an indictment is only an accusation is nonsense. The return of an indictment and the publicity surrounding that indictment does a great deal of damage to an individual and if this rule is being interpreted by this body or by anyone else

as saying that a defense lawyer can't attempt to repair any of that damage, that a defense lawyer has to confine his efforts simply to arguing a trial and securing an acquittal for his client if he can is to miss the whole point.

A lawyer owes a duty to his client. His duty is to protect his client as well as he can within the bounds of the law and a person who is indicted, using the Sanders case as an example, his reputation is damaged. He is undergoing a great deal of damage and hurt far prior to a trial and an attorney I do not believe acts improperly when he attempts to repair that damage.

I have reviewed the statements that were made by Mr. Gentile in the press conference and I've reviewed the rule. I've come [116] to two conclusions. I think a strong argument can be made that those statements do not violate the rule because the rule in my mind was intended to prevent certain types of statements, statements where a defense attorney might express a personal belief in his client's innocence and might hint that there's evidence that will never come out and thereby try to poison the well of public opinion and secure for his client an acquittal that he's not entitled to.

That to me is a whole different type statement than statements that were made at this press conference which were "My client is innocent and we will produce the evidence that will show you that. We think that the police officers are good suspects and in court we will produce the evidence that shows you that there is more reason to believe that they committed these crimes then that my client committed these crimes." I view those as statements that are not in violation of the rule.

The second conclusion that I've come to is if you think those statements are in violation of the rule and if you're right, then [117] the rule is absolutely unconstitutional. The rule impedes both an attorney's right to freedom of speech and expression and a defendant's right to effective assistance of counsel because again if an attorney is to

do an effective job defending his client and defending him again means more than just defending him in court. It means defending him against the damage that he incurs outside of court.

If a lawyer is going to be able to do that, that lawyer has to be free to speak and if a defendant is going to receive what the law says he is entitled to which is an adequate defense, then the lawyer can't be hamstrung so on both of those grounds on the defendant's constitutional right to effective assistance of counsel and on a lawyer slash citizen's right to freedom of speech if what this rule says is that a lawyer cannot say my client is innocent and we will prove it, then this rule is facially and blatantly unconstitutional.

MR. HOWE: No further questions.

THE CHAIRPERSON: Mr. Howe?

MR. HOWE: I have no questions.

THE CHAIRPERSON: Questions by any of the [118] panel members? Okay.

THE WITNESS: May I impose on the panel for just one minute and I know it's late and I know you've been here a long time and I know nobody asked me a question but there is one thing that I would like to say.

THE CHAIRPERSON: Sure.

THE WITNESS: I spent, as I've detailed for you, the first 13 years or so of my career as a prosecutor. I like to think that during that period of time I was a dedicated public servant. I still am a dedicated attorney and am dedicated to what I believe to be the ideals of our profession.

I think that compared to Dominic Gentile I hardly stop to think about what it means to be a lawyer and what I mean by that is I know a lot of attorneys and I know attorneys who go from day to day from week to week and from year to year and they never stop to think about what they're doing. They never stop to think about their ethical responsibilities. They never stop to think about

their conduct and how their conduct fits within the ethical guidelines that they have to observe.

[119] I know a lot of attorneys that never occurs to. I've worked cases against Mr. Gentile. I've worked cases with him. I shared office space with him for a short period of time when I first went out into private practice and I can tell you that I have never met an attorney who takes his ethical responsibilities more seriously.

I have never met an attorney who I less expected to see as a respondent in a hearing like this and I don't think I've ever met an attorney who deserves more to be vindicated at the end of this hearing than Mr. Gentile does. He is an honest and ethical attorney who abides by the rules and he did so in this matter.

THE CHAIRPERSON: Thank you, Mr. Kane.

EXAMINATION

BY MR. URGA:

Q. Let me ask a question. Nothing to do with that last speech. But looking at 2-A. Do you have Exhibit E in front of you? I take it, Mr. Kane, you would admit that the state or the public is entitled to a trial that's fair to the public's side, the prosecution's side, both sides?

[120] A. I do.

Q. Now, let's take the example where you know it's truthful that the witness or the person who is going to be called as a witness, the key witness, has got a criminal background or has got some other character problem or reputation problem. Do you believe it's proper for a defense attorney to bring that forward at a press conference even though he may be able to bring it forward and prove it at a time of trial, in other words try his case ahead of time?

A. I don't think it's proper for him to try his case ahead of time in the sense of detailing each and every item of evidence he's going to present to the trial. To say something like the government's witnesses are not credible and we will show that based upon their past

records or based upon their bias, I don't think is improper at all and in this particular case I can specifically recall Mr. Gentile towards the conclusion of the press conference being asked by the reporters for exactly those kind of details and refusing to give them.

Q. So do you draw the distinction between 2-A and 23-A [sic] meaning that you can talk in [121] general terms as you've described but you can't say that this witness was convicted of armed robbery ten years ago or was convicted of fraudulent conduct of some sort and naming a crime?

A. I think that if you get into those kind of details you would be running a risk of violating the rule and what I mean by that that if your comments later turned out to be based on admissible evidence I don't think that you would have done anything improper but when you start talking in detail about impeachment evidence that will be offered at trial, it may be that the judge won't let you offer some of that specific impeachment evidence and now you have made a public statement that has been disseminated to the public and of which they have knowledge concerning matters that may not come into evidence at trial and so I think if you get that specific, you run the risk of violating the rule.

Q. All right. So your basis for the violation of the rule is whether it's admissible or not.

A. I think that if you refer to evidence that was not admissible or which you know [122] did not exist you would be violating the rule.

MR. URGA: I have nothing further.

THE CHAIRPERSON: Any questions by any other panel members? Mr. Galatz, any questions?

MR. GALATZ: No.

THE CHAIRPERSON: Mr. Howe?

MR. HOWE: No.

THE CHAIRPERSON: Okay. Thank you, Mr. Kane.

(Whereupon Edward Kane was excused from the room.)

MICHAEL DANIEL MARKOFF,

having been first duly sworn to testify to the truth, the whole truth and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GALATZ:

Q. Will you state your full name for the record, please.

A. Michael Daniel Markoff.

Q. Will you tell the panel, please, what your educational background has been and what your experience has been as an attorney?

[123] A. As far as my higher education is concerned I attended the University of Nevada Las Vegas, have a Bachelor's of Art. That's in history, American history. Attended the University of San Diego School of Law. I have a Juris Doctorate. I graduated in 1973. I was in private practice for approximately two years, accepted a position in 1975 as an assistant federal public defender and since 1980 I have been federal public defender for the District of Nevada.

Q. You have reviewed the videotape Exhibit 4, the press conference of Dominic, the voir dire excerpts, the opening statement, the final argument and the Exhibit A, the press coverage of the Sanders case; is that correct?

A. Yes, I have.

Q. Based upon the materials you've reviewed and your experience in the practice of criminal law do you have an opinion as to the propriety or impropriety of Dominic's press conference and the interpretation, application of Rule 177?

A. Yes, I do.

Q. Tell the panel, please. We're [124] asking for a narrative, yes.

A. Okay. Having looked at the videotape, the clippings, read the comments in the transcripts and things

of that nature, and also being a practitioner of the law for some 15 years I guess now, 16, whatever it's been, I think that the comments that Mr. Gentile made are completely justified. There is absolutely nothing wrong with what he said and he had every right in the world to say it under the law and under the Constitution of the United States.

Q. Tell the panel why you feel this way.

A. First of all, just reading the Constitution itself and the First Amendment guaranteeing the right to free speech and the Fourteenth Amendment which incorporates the entire Bill of Rights of which the First Amendment is one of them making it applicable to the states he has a constitutional right both as an individual and as an attorney speaking on behalf of his client to state his position and make that known to the public.

I have looked at the rule and it is my opinion that the rule is nothing more [125] than a prior restraint upon the exercise of the perhaps the most fundamental freedom that we have in this country. That's as plain and simple as that. The rule itself is fashioned perhaps with good intentions and nobody can fault those but there are far greater and more important things in this world and that is our right to free speech.

A client, a defendant, if you will, has rights beyond that of just free speech. One of those is to be effectively represented by counsel and that is guaranteed by the Sixth Amendment of the Constitution. Effective representation does not mean just getting up in a courtroom and saying what your claim or defense is. It goes beyond that because whenever a charge is brought against an individual, whenever be that individual guilty or be he innocent at the time that charge is made that man's life for all practical purposes is done. It's condemned. It's been held up to public ridicule by the legal process.

Now, a person has the right especially where the attorney has reviewed the facts and is cognizant of what's

going on to start presenting a defendant's version of what happened [126] because publicly that defendant has been condemned and part of effective representation, the effective assistance of counsel is that the Constitution guarantees and enshrines in the Bill of Rights is the ability of an attorney to get up there exercising another right, the First Amendment freedoms, and start speaking on behalf of his client and what I've seen in the words that were used in this particular instance is nothing more really than what the evidence is expected to show and what it did show and bore out what was said in the final analysis.

If there ever comes a time when the prior restraints of free speech are put upon an attorney and the ability to go out and effectively and zealously represent somebody not only in the courtroom but in front of the public as well then frankly those rights don't mean a damn thing and that's all there is to that.

MR. GALATZ: I have no further questions.

THE CHAIRPERSON: Mr. Howe?

MR. HOWE: I don't have any questions.

THE CHAIRPERSON: Questions by any members of the panel? Okay. Mr. Markoff, thank you very much. [127] THE CHAIRPERSON: Any further witnesses, Mr. Galatz?

MR. GALATZ: There was one other witness, George Knapp from TV 8, a newscaster, but unfortunately with the continued dates he's unavailable tonight and I don't want to drag this hearing through another night so we will somewhat reluctantly I guess waive calling him and submit it.

THE CHAIRPERSON: Okay. So you're resting. Mr. Howe, any rebuttal witnesses?

MR. HOWE: No.

THE CHAIRPERSON: Then I guess we're prepared to entertain closing arguments if you have some you'd

like to make, although I think it's fair to say that the panel members understand pretty well what the issues are.

MR. GALATZ: I certainly think so and I mean, again, it's up to Mr. Howe. I would be willing to submit it. You've got the materials.

MR. HOWE: There are a couple of comments I'll make. I won't make an elaborate closing argument and I won't go into detail on the statements from the conference. Those are before the panel but there are a couple of issues that I [128] think I should just briefly address as to state the position so the panel knows the position that the State Bar takes with regard to those.

No. 1, I think the argument has been presented that there is a need for defense comments to counter statements made by the press, to the press by the sheriff and other police officers. I don't believe that that justifies comments by an attorney. There is case law to the effect that it does not. There is case law to the effect that an attorney is an officer of the court and is held to a higher standard and that the rule applies and that is not one of the exceptions to the rule the fact that some police officer may have made a statement and now the, and that that opens the door, if you will, for an attorney to make statements that would otherwise be improper.

There has been a great deal of discussion about whether or not there was actual prejudice to a fair trial in this particular case and I don't believe that that is a legitimate issue. An attorney has either violated this rule or not violated this rule at the time he makes his statement.

The rule prohibits a statement [129] that is reasonably —excuse me—rather than paraphrase it. That a reasonable person would expect to be disseminated by means of public communication if he knows or reasonably should know that it would have a substantial likelihood of materially prejudicing and adjudicating process.

He either has to—he makes a statement and he's either committed a violation of the rule or he hasn't. We can't

wait around until the trial happens and then find out whether or not the action that he took back then violates the rule because we're now going to wait and see what the prejudice is.

The rule is clear that a volition [sic] either occurs or doesn't occur at the time the statement's made and the fact that there was or was not actual prejudice at the trial may help us in deciding whether or not that statement was or was not a violation but the volition [sic] occurred there at the time he made the statement and he is not either expunged or incriminated by what happens some time later.

The constitutionality of this rule I believe is beyond the purview of this [130] panel. Certainly it's legitimate for the respondent to raise that issue here and preserve it if it is appropriate for him to appeal to a higher court so that he has it preserved for appeal. This panel must take the rule given to it by the Nevada Supreme Court and apply that rule and only the Nevada Supreme Court or a higher court can decide that the rule is unconstitutional and throw it out.

Certainly we've heard a lot of arguments which could reasonably be interpreted to say that this is a bad rule. That doesn't change the fact that this is the rule and unless and until this rule is overturned or abolished the attorneys licensed in this state and practicing in this state are bound to abide by it.

The final matter that I think it is appropriate that I address is the issue as to appropriate discipline should this panel find that there's been a violation. I think there is ample evidence before this panel as to Mr. Gentile's reputation and ability as an attorney although I believe that he has committed serious violations of this rule and this is—

MR. GALATZ: Excuse me, counsel. I [131] object. You have just violated the rules yourself.

MR. HOWE: I certainly haven't violated 177 because I'm not making an extrajudicial statement.

MR. GALATZ: You just stated your personal beliefs, counsel. I'm not picking on you, John, what I'm pointing out to you is it's real easy to slip.

MR. HOWE: It shows that there's been a violation and that it is a serious one. I do not believe that there is any basis upon which there should be any recommendation by the bar or by this panel for a suspension or a more serious recommendation.

I believe that the rule—it is essential that this rule be enforced and that the attorneys of this state be placed on notice that it will be enforced and what type conduct will be considered to be a violation of it. With that in mind I think that should the panel find that there's been a violation of the rule that the appropriate discipline to be imposed would be a public reprimand.

MR. GALATZ: Very, very, very briefly I [132] would remind you that Rule 105 E requires that the findings of the panel have to be supported by clear and convincing evidence. And there is in my view of the evidence no clear and convincing evidence that there was a violation of the rule to start with. The rule is certainly vague and unclear and conflicting enough that each and every statement and the opinions of several very competent attorneys who have testified fall within the proper purview of the statements permitted under the rule.

The briefs address at great length the constitutional issues and I don't think that this panel or any panel that's enforced with the obligation of doing justice has to sit back and say that we will enforce something that we think is then unconstitutional and that you have a perfect right to conclude that the rule is improper and throw it out and certainly the view that's being offered is absolutely a prior restraint to view.

We judge it by the time the statement is made performed without effect on the jury when we see that the uncontradicted evidence is that there was no effect on the jury in this [133] instance. If you're taking it back in time then you are absolutely into a prior restraint and

if you're into a prior restraint under all of the tests of constitutionality, the public's right to know, the right to free speech and the attorney's obligation to defend a client in the real world which includes a little bit more than the courtroom would all absolutely make this rule unconstitutional.

I'm not going to belabor you. You've listened to I think some very outstanding attorneys from very diverse backgrounds and I won't take any credit on the brief our office submitted but I think that the amicus brief is done and that under any view there is no violation. There's certainly no violation that's been proved by clear and convincing evidence and that you're dealing with a rule that is unconstitutional certainly as it's intended to be applied here and I suspect it is under any circumstance. Thank you.

THE CHAIRPERSON: Anything further, Mr. Howe?

MR. HOWE: Nothing further.

MR. URGA: Can we get that transcript?

[134] MR. GALATZ: Let me look and see if I can find it. Let me show it to you, John.

MR. URGA: It would be useful in deliberations.

(Discussion off the record.)

MR. HOWE: It's apparently done by a court reporter. I assume that it's complete and I don't have any objection.

MS. HANSEN: Can we just get a stipulation that that will be the transcript that's admitted into evidence.

MR. GALATZ: So stipulated, but I want my copy back.

MR. HOWE: We can make a copy right now.

MR. GALATZ: Okay. Fine.

MS. HANSEN: That's the way to do it.

THE CHAIRPERSON: So, John, do we have a stipulation on the record between you and Mr. Galatz that this is exhibit next in order which will be F shall be treated by us as the true and accurate complete transcript?

MR. HOWE: So stipulated.
MR. GALATZ: So stipulated.

(Remarks off the record.)

(Whereupon, Respondent's Exhibit F [135] was marked for identification by the court reporter.)

(Whereupon the proceedings concluded at 10:06 P.M.)

[Reporter's Certificate Omitted in Printing]

SUPREME COURT OF NEVADA
CLIFF YOUNG, JUSTICE
Capitol Complex
Carson City, Nevada 89710

[SEAL]

March 8, 1988

Ann Bersi, Ph.D.
Executive Director
State Bar of Nevada
295 Holcomb Avenue
Reno, Nevada 89502

Dear Ann:

Enclosed are two articles which appeared in the Las Vegas papers on February 6, wherein apparently Dominic Gentile held a news conference after indictment of one of his clients, stating he is innocent of all charges.

I would appreciate it if you would refer this to bar counsel for a determination whether there was a violation of our Rules of Professional Conduct.

I would appreciate being advised whether any action is being taken with respect to this occurrence.

Sincerely,

/s/ Cliff Young
CLIFF YOUNG

CCY:jit
Enclosures

[Attachments reprinted at J.A. 100-103 and 127-129.]

Las Vegas Review-Journal
February 2, 1987, p. 1A

BURGLARY OF POLICE VAULT PROBED

By Alan Tobin
Review-Journal

Sheriff John Moran said today Metropolitan Police have 15 possible suspects in the theft of an undisclosed quantity of cocaine and $300,000 in blank travelers checks from a secret police safety deposit box.

The items were discovered missing Saturday from the safety deposit box at Western Vault Corp., 2929 S. Maryland Parkway. The department's intelligence bureau used the box to secure travelers checks and narcotics used for undercover investigations.

At a news conference this morning, Moran said there were no signs of forced entry into the box. Access could only be gained if two undercover officers were present along with an employee of the vault company, police said.

Possible suspects include police and employees of Western Vault Corp. The serial numbers of the blank American Express Travelers checks have been entered into national and international law enforcement computer systems, Moran said. He said none of the checks have been cashed as far as authorities know.

"We have developed 15 suspects that we are going to have to eliminate by the process of the investigation itself," Moran said.

The sheriff also said reports that the intelligence bureau's undercover apartment was burglarized in connection with the theft were erroneous.

"No undercover location utilized by this department has been compromised in any manner other than the

safety deposit box at the vault corporation," Moran said. "Further, reports of jewelry and cash being taken are erroneous. None of these items were kept in the vault."

The investigation into the theft is being conducted jointly by the department's detective bureau and the criminal intelligence section under the direction of Cmdr. Jerry Cunningham. It is not known how long the investigation will take.

"Metro is a victim in this particular case," Moran said. "And being a victim it will be handled like any other criminal investigation. I have complete faith and trust in the investigators and I'm certain they will leave no stone unturned to find out who is responsible for the theft."

In a related development, a Las Vegas attorney who attended the news conference, reported that his client discovered a large sum of cash missing from his safety deposit box at Western Vault Corp. on Jan. 20. Donald Haight declined to identify his client or disclose the amount of money missing but said it was in five figures.

The drug theft is the first major controversy involving the intelligence bureau since Moran was elected sheriff in 1982. Since 1984 the bureau has spearheaded several undercover sting operations that have led to the conviction of more than 100 criminals. The bureau has gained the respect of law enforcement officials nationwide for its track record involving undercover operations.

Moran said the thefts have not rocked his confidence in the intelligence bureau. The bureau is made up of an elite corps of detectives who investigate street crime and organized crime activities.

"I have complete faith and trust in all members not only of the Metropolitan Police Department but the intelligence bureau," Moran said.

Haight said he was told by Western Vault Corp. that it has no sign-in and sign-out log at the Maryland Parkway facility and people can come and go without signing in.

He said boxholders can anonymously make deposits and withdrawals. They are given a key to the box, and a codename or a fingerprint card.

Haight said the police burglary and his client's loss are the only two thefts from the vault that he's aware of. He suggested that people keeping valuables at the vault check to see if they have anything missing.

Las Vegas Review-Journal
February 4, 1987, p. 1B

FBI JOINS PROBE INTO CHECKS THEFT

The FBI on Tuesday joined the Metropolitan Police Department's investigation into the theft of $300,000 in blank travelers checks from a secret police vault.

Police learned Saturday that the American Express Travelers checks were missing along with an undisclosed quantity of cocaine from the safe-deposit box at Western Vault Corp., 2929 S. Maryland Parkway. The department's intelligence bureau used the box to keep travelers checks and narcotics used in undercover investigations.

The FBI entered the investigation because whoever stole the checks may be facing charges of interstate transportation of stolen property.

George Togliatti, a supervisor with the Las Vegas FBI office, said the FBI routinely works with the Police Department on cases involving the theft of jewelry, cars or negotiable instruments such as travelers checks. In such thefts the items are often taken across interstate lines.

Serial numbers of the blank travelers checks have been entered into national and international law enforcement computer systems, police said. None of the checks has been cashed or passed so far as authorities know.

Possible suspects in the theft include both police and employees of Western Vault Corp.

The Metropolitan Police investigation is being conducted by the department's detective bureau and the criminal intelligence section under the direction of Cmdr. Jerry Cunningham. Authorities said they do not know how long the investigation will take.

At a press conference Monday, Moran said the thefts have not rocked his confidence in the intelligence bureau.

Las Vegas Review-Journal
February 5, 1987, p. 1B

9 POUNDS OF COCAINE PART OF METRO HEIST

Almost 9 pounds of cocaine with an estimated street value of $1 million were part of a theft from a Secret Metropolitan Police safe deposit box, sources said Wednesday.

Police learned Saturday that the drugs were missing along with $300,000 in blank American Express travelers checks from a safe deposit box at Western Vault Corp., 2929 S. Maryland Parkway. The box was rented by the department's intelligence unit to secure travelers checks and drugs used in undercover operations.

Earlier this week, police officials declined to disclose the amount of cocaine taken. The almost 9 pounds of cocaine is 4 kilograms.

According to narcotics experts, the wholesale price for a kilogram of cocaine is about $30,000. When it is broken down for user distribution, each kilogram has an ultimate street value of $200,000 to $250,000.

Possible suspects in the theft include both police and employees of Western Vault Corp. The police investigation into the thefts is being headed by Cmdr. Jerry Cunningham.

"We've had full cooperation from members of our intelligence bureau in this investigation," Cunningham said, "Western Vault has also been cooperative."

Two detectives with the intelligence bureau voluntarily submitted to a drug test in connection with the probe. The results of the test were negative, a police source said.

Authorities say that to their knowledge none of the checks have been cashed or have surfaced.

In a related development, Las Vagas attorney Donald Haight disclosed that one of his clients discovered $90,000 missing from his safe deposit box at Western Vault Corp., on Jan. 20.

"It was his life savings and his father's life savings," Haight said.

The travelers checks and cocaine were part of a "flash roll" used to bait criminals in undercover investigations.

Las Vegas Review-Journal
March 12, 1989, p. 1B

OFFICER: VAULT HEIST TARGETED METRO STING

By Alan Tobin
Review-Journal

Four kilograms of cocaine and $300,000 in blank travelers checks may have been stolen from a secret Metropolitan Police safe deposit box in an attempt to discredit a major undercover sting operation, according to court documents.

An affidavit filed in District Court by Det. Thomas Dillard, who was assigned to the investigation, states that the theft was not committed solely for financial gain.

Police discovered on Jan. 31 that the drugs and travelers checks were missing from the safe deposit box at Western Vault Corp., 2929 S. Maryland Parkway.

Whoever was responsible for the thefts had access to an additional 12 kilograms of the drug and another $200,000 in travelers checks and jewelry that was being kept in the safe deposit box, but didn't take it, Dillard said.

"This leads (me) to conclude that the theft was made to discredit the STIFF (undercover) operation," Dillard said in the affidavit.

He was referring to the Special Trust Investigative Fund used to finance undercover sting operations.

Dillard also stated in the affidavit that business records show a relationship between five people targeted in a recent undercover probe and Western Vault Corp. President Grady Sanders. One of the targets is a Las Vegas attorney.

Attempts to reach Sanders for comment were unsuccessful.

According to narcotics experts, the ultimate value of 16 kilograms of cocaine is about $4 million.

The safe deposit box was rented by the Police Department's intelligence unit to secure drugs and checks used by detectives in undercover sting operations.

At the time of the thefts, the department was conducting a major undercover sting code-named "Operation Pegasus." That investigation culminated Feb. 14 with the arrests of 89 suspects on various criminal charges. Among those arrested was reputed mobster John Vaccaro Jr.

Deputy Police Chief John Sullivan said Wednesday that the two detectives who had access to the vault have been cleared as possible suspects in the theft.

The drugs and travelers checks were kept in the safe deposit box for use as a "flash roll" or bait during sting operations. Targets in the sting were reportedly brought into the vault and shown the contents of the box.

To date, police have been unable to track down the person responsible for the thefts.

Dillard concluded that whoever stole the travelers checks and cocaine had a key to the police deposit box.

Police sources say that Sanders has not been fully cooperative with authorities investigating the theft.

Dillard also said in the affidavit Sanders told police that during his tenure at Western Vault Corp. he has ordered numerous vaults drilled open for various reasons including non-payment of rent, lost keys, problems with locks and to comply with court orders.

Dillard states in the affidavit that Sanders told police that narcotics were found in about 15 of the vaults he previously ordered drilled open. But police say the reported discoveries were never brought to their attention.

The Police Department has no record of narcotics ever being impounded at Western Vault Corp., Dillard said.

Las Vegas Review-Journal
March 26, 1987, p. 1B

VAULT FIRM TO CLOSE ITS DOORS

By Alan Tobin
Review-Journal

Hundreds of Western Vault Corp. customers apparently have cleaned out their safe-deposit boxes in the aftermath of a major theft of police property at the facility, which plans to close June 1.

The vault company became embroiled in controversy Jan. 31 when Metropolitan Police discovered 4 kilograms of cocaine with a street value of $1 million and $300,000 in blank travelers checks were missing from a secret police safe-deposit box being used in an undercover operation.

In a newspaper advertisement Wednesday, the vault company announced it intends to close June 1. The company is advising customers to remove property from safe-deposit boxes by that date.

In the ad, the company said the sting operation and the subsequent serving of the search warrants at the facility "have harmed Western Vault Corp. and the confidentiality of its clients."

"Accordingly, Western Vault Corp. feels that to prevent further breach of this confidentiality and to protect its customers, it now has no alternative but to cease business operations," the ad said.

Metropolitan Police officials denied breaching the confidentiality of the vault company's customers.

"We don't feel that what we did in serving our search warrants was as damaging as suggested in the newspaper advertisement," Police Department Cmdr. Jerry Cunningham said.

Western Vault Corp. President Grady Sanders could not be reached for comment.

In the ad, Western Vault Corp. said the police used the facility for the sting operation without the company's knowledge or consent.

A source close to the investigation said hundreds of customers have emptied and closed out their safe-deposit boxes since news of the thefts became public last month. Sources said Sanders is expected to file suit against the Police Department.

On Feb. 10, police opened numerous rented and non-rented safe-deposit boxes at the facility 2929 S. Maryland Parkway. They didn't find the missing checks and drugs.

In one of the non-rented boxes, police reportedly seized $264,900 in U.S. currency.

The two undercover detectives who had direct access to the secret police safe-deposit box have been cleared of suspicion in the thefts by authorities assigned to the investigation. Sources close to the probe said they believe whoever is responsible for the thefts was unaware they were stealing from police.

Under state law, the vault company must exercise due diligence in trying to locate the owner of any unclaimed property left at the facility.

A spokesman for Nevada's Unclaimed Property Division said that upon dissolution of the business, any unclaimed property must be turned over to the division within one year. The state also tries to locate the owner and after a year has the option of auctioning the property.

The proceeds of the auction would be held for the owner. If the unclaimed property includes cash, it also is held for the owner or his heirs.

Las Vegas Review-Journal
March 31, 1987, p. 11B

A COLORFUL CAST OF CHARACTERS AWAITS THE SUMMER HEAT

By Ned Day

It's that time of year. A pleasant cool spell lulls certain citizens into the false hope that the inevitable searing heat of the high desert summer might never materialize.

But soon the heat will come.

Bone cooking heat, as if from some giant devilish oven, oppressive, demoralizing days, followed by sweltering, stuffy, supremely dangerous nights.

They are the kind of desert nights on which an obedient, long-suffering working girl might find herself gently fingering a butcher knife and eyeing the back of her pimp's sweat-soaked neck.

On such nights, you can hear the wild dogs howling outside the fences of the trailer courts along Boulder Highway, frightened rats scurry for cover, and the gay neon clown that towers over the Strip reverts to an ugly, sneering giggle.

On such nights in Las Vegas, the streets turn mean.

Ask Ray Slaughter, the private detective and polygraph expert now facing federal charges of selling cocaine to a winsome young woman half his age.

Slaughter is the man who administered a lie detector test to two Metro Police officers, clearing them of suggestions that they might know what happened to $1.2 million in cocaine that is missing from a Metro vault.

The two undercover officers—two of the most daring and respected cops on the force—had stashed the drugs over at Western Vault Co. to be used by them to enhance their undercover masquerade as criminals.

Then, in late January, the stingers got stung. The drugs turned up missing from the Western Vault box.

Faced with a cloud of suspicion, the two cops volunteered for the lie detector tests; they retained Slaughter, took the test and were cleared.

A few weeks later, FBI agents went to work on Slaughter—with a comely young ingenue, alluring, tempting and wired for sound, ready to purchase cocaine.

On the mean streets, they call it the "honey trap."

According to a subsequent federal indictment, Slaughter fell for it and came across with the precious Colombian marching powder.

For Ray Slaughter, the hot summer started early.

But now, new developments threaten to turn the heat in another direction.

It all has to do with secret negotiations down in Tucson, Arizona, where tender Tammy Sue Markham is facing a number of federal drug-related charges.

Little Tammy Sue, you see, happened also to have been a client of the Western Vault Co., at the same time the Metro drugs were stolen.

Now, she's in trouble with the FBI, the Drug Enforcement Administration, and U.S. customs.

A short time ago, some $250,000 in cash was seized by the government from Tammy Sue, seized from a safety deposit box at Western Vault Co. in Las Vegas.

The money was found inside one of Tammy Sue's suitcases, a suitcase that also contained some of her identification.

But it was sort of odd, you see.

Because Tammy Sue's suitcase and money were not found where they were supposed to be—inside one of the safety deposit boxes that she rented from Western Vault.

Tammy Sue's suitcase full of cash was found in Box 1226, which was not one of her boxes. In fact, according to Western Vault records, Box 1226 was not being leased by anyone when her money was located inside Box 1226.

Very strange, indeed.

But our mystery only gets stranger.

Just last week, Tammy Sue, her lawyer and agents from the FBI, Drug Enforcement Administration and U.S. Customs showed up at the Western Vault Co.

Tammy Sue led them to three safety deposit boxes that she had been renting from Western Vault. Inside those boxes, she told the agents, they would find much cash and gold coins—with a value estimated in excess of half a million.

Tammy Sue was wrong.

Like the Metro box that had been emptied of its cocaine, Tammy Sue's three deposit boxes also contained nothing but air.

What happened to her loot?

This brings us to Beatricz Connick, a Colombian national now living in San Diego. Ms. Connick is not facing any drug related charges.

But she did have a safety deposit box at Western vault, one that also is empty.

Ms. Connick has taken and passed a police-sponsored lie detector test to substantiate her assertion that her box was not always empty, that, in fact, it once contained such booty—booty now mysteriously missing.

What a wonderful cast of characters who now contemplate the coming summer season.

Determined Metro sleuths, hunting for a million in missing drugs; two daring, hard-nosed, street-wise undercover coppers still under a cloud; grim-faced, grey-flannel FBI agents and their colleagues in DEA and Customs.

Veteran Las Vegas private eye Ray Slaughter, an indicted, desperate man who knows much about the sleazy underbelly of our town; a comely young ingenue and snitch, presumably no longer wired for sound.

Tender Tammy Sue Markham of Tucson, Arizona; Ms. Beatricz Connick, the mysterious Colombian national now living in San Diego.

And, of course, handsome, smooth-talking Grady Sanders, the flamboyant entrepreneur who owns Western Vault, along with a stable of thoroughbreds, a Rolls Royce and the other perks of prosperity.

They all wait, nerve-ends rubbed raw.

Wait for that oppressive, demoralizing, hot summer wind that spews out of a nameless devil's oven, wraps itself around the Sheep Mountain Range and whips into our valley, scorching the minds, bodies and souls of high desert rats who compete for advantage on the mean streets of Las Vegas.

Las Vegas Review-Journal
July 21, 1987, p. 1E

METRO PREPARES CASE IN COCAINE, CHECKS THEFT

By Alan Tobin
Review-Journal

Metropolitan Police say they hope to submit a case shortly for prosecution in the theft of $1 million worth of cocaine and $300,000 in blank travelers checks from a secret police safe-deposit box.

Police discovered 4 kilograms of cocaine missing along with the travelers checks from a safe-deposit box rented from the Western Vault Corp. on Jan. 31. The checks and drugs were part of a "flash roll" used by officers in an undercover investigation to bait criminal suspects.

After news of the thefts became public, hundreds of customers emptied and closed out their safe-deposit boxes at the facility, formerly located at 2929 S. Maryland Parkway.

The vault company closed for good in June. At the time, Western Vault President Grady Sanders said he was closing the company because it "could not survive a major scandal."

Police Capt. Paul Connor said detectives have interviewed dozens of people in connection with the investigation.

"We are optimistic that we are making progress and hope soon to have a case to present to the district attorney," Conner said.

Earlier this year, investigators cleared the two undercover detectives, who had access to the safe-deposit box, of any suspicion. Conner would not comment on whether Sanders will be charged.

"It's premature to say what charges and who will be charged," Conner said. "We have to wait until we have the final results of our investigation and all the evidence is obtained."

Conner said police still hope to recover the property taken from the safe-deposit box.

"We always held the [copy illegible in original] that we will be able to recover the property taken," Conner said. "Sometimes you have a burglary and after six years you haven't found the property. Then after six years and two months you recover it."

Privately, police experts have expressed several theories for the theft.

An affidavit filed in District Court by Detective Thomas Dillard in February suggested that the theft was done to discredit a major police sting operation. Dillard noted that whoever was responsible for the theft had access to an additional 12 kilograms of cocaine and another $200,000 in travelers checks and jewelry that was being [copy illegible in original] did not take it.

Others have speculated that the thefts were committed by someone who had no idea that he was stealing from undercover police. They theorize that whoever was responsible for the thefts may have been looking for a large cache of allegedly stolen bearer bonds or drugs.

Undercover officers were conducting investigations involving both shortly before the theft from the vault was discovered.

Las Vegas Review-Journal
February 6, 1988, p. 1A

VAULT OWNER INDICTED IN DEPOSIT BOX THEFTS

By Alan Tobin and Warren Bates
Review-Journal

The owner of the defunct Western Vault Corp. was indicted Friday on charges of stealing cocaine, travelers checks, cash and jewelry valued at more than $3 million from safe deposit boxes rented by Las Vegas police and several private customers.

Grady Sanders was the only defendant named in an 11-count indictment returned by the Clark County grand jury. He is charged with two counts of racketeering, one count of trafficking a controlled substance and eight counts of grand larceny.

He was released on his own recognizance and is scheduled to appear Feb. 22 before District Judge Earle White where he is expected to post $100,000 bail.

Sanders was the only owner of Western Vault, 2929 S. Maryland Parkway, when police discovered almost 9 pounds of cocaine valued at $700,000 and $300,00 in blank American Express Travelers checks missing on Jan. 31, 1987, from a police safe deposit box being used in an undercover investigation.

The drugs and the checks were part of a "flash roll" used by Detective Steve Scholl and Sgt. Ed Schaub to gain the confidence of narcotics suspects and other criminals.

After the theft from the police safe deposit box was discovered, seven other Western Vault customers reported that $2.2 million in cash and jewelry had been stolen from their boxes.

The indictment was the result of a yearlong investigation headed by Chief Deputy District Attorney Robert Teuton.

Sanders, accompanied to court Friday by attorney Dominic Gentile, declined to talk to reporters.

However, Gentile later held a press conference and said he will present evidence at trial proving that Scholl stole the drugs and travelers checks from the police safe deposit box.

"There is far more evidence that will establish that Detective Scholl took these drugs and took these American Express travelers checks than any other living human being," Gentile said.

"And I have to say that I feel Grady Sanders is being used as a scapegoat to try to cover up for what has to be obvious to people at the Las Vegas Metropolitan Police Department and at the district attorney's office."

Shortly after the theft, police investigated and cleared the two detectives, both of whom had immediate access to the safe deposit box. Both reportedly passed lie detector tests.

"I don't know on what basis (Gentile) is making those allegations," Deputy Chief John Sullivan said at a Friday afternoon press conference. "Was he able to explain away the other thefts from the vault or did he say Steve Scholl was responsible for those?"

Lt. Loren Stevens of the Police Department's intelligence services bureau, who supervised both Schaub and Scholl, defended the two detectives but declined to discuss specifics of the case.

"The appropriate arena for this case is in the courtroom," he said. "Those of us who are assigned to this investigation will certainly show up for the trial and that's where any and all evidence germane to the case should be presented."

Western Vault closed operations in June after Sanders said the sting operation and resulting publicity ruined his business.

Police think there are other former vault customers who had valuables stolen but have not contacted police.

To date, neither the drugs nor the stolen property has been recovered, Sullivan said.

"The drugs certainly were dispersed with the community or the country a very short time afterward," he said.

Sullivan said he doubts Sanders had any idea he was stealing from police.

Gentile said that in past sting operations conducted by the FBI, Drug Enforcement Agency and U.S. Customs authorities, Sanders had always been notified of the probes.

He suggested that Las Vegas police were "playing fast and loose" and had not told Sanders they were undercover.

Gentile also questioned the credibility of four of the victims named in the grand jury's indictment. He said they were known drug dealers and money launderers.

Sullivan said a background check on Sanders before the safe deposit box was rented gave them no reason to believe the contraband was at risk.

"Contrary to our initial information from Western Vault we found early on that there were several duplicate keys," he said. "It would be easy for somebody to gain access.

"We felt confident that that amount of cocaine would be secure in that environment. We found out we were wrong."

After the theft, some federal law enforcement officials privately suggested that police were outsmarted in an exchange with drug dealers and used the theft as an alibi. Others said they suspected the officers stole the drugs and the checks.

As a result, relations between some police and federal authorities have been strained. Police hope the indictment will quell the suspicions.

The drug trafficking charge carries a sentence of 15 years to life imprisonment and a $250,000 fine. Each grand larceny charge carries a one- to 10- year sentence. Each racketeering count has a 5- to 20-year penalty.

If convicted Sanders also faces forfeiture of his business and personal holdings.

Las Vegas Sun
February 2, 1987, p. 1A

LOOT, DRUGS STOLEN FROM METRO SAFE

By Ed Koch
SUN Staff Writer

Cash, jewelry and drugs apparently have been stolen from a safety deposit box issued to the Metro Police Intelligence Bureau.

Sheriff John Moran said Sunday that "something is missing and that we are still piecing together all of the facts before we make a statement."

Moran said he will disclose the details in a press conference Monday.

Media reports have placed the value of the cash, jewelry and drugs taken from the safety deposit box at around $250,000, but that could not be confirmed.

The items kept in the safety deposit box at the Western Vault Corp., 2929 S. Maryland Parkway, were believed to have been used as bait during a "sting," an undercover operation where police pose as the criminal element to capture suspects.

There is an unconfirmed report that an apartment used by the Intelligence Bureau to conduct a sting operation also was burglarized.

There apparently was no forced entry in the safety deposit box burglary. When the apparent burglaries occurred was not disclosed.

It was not known if there are any suspects in the alleged thefts.

Moran said that he has discussed the incident with members of his staff, but would wait until the press conference before discussing the facts of the case.

The Intelligence Bureau has gained much attention over the past two years for its successful stings of street criminals and robbery and burglary fencing operations.

Some of the sting operations have been funded by community businesses that donated money to Intelligence Bureau representatives specifically for the covert activities.

Las Vegas Sun
February 3, 1987

METRO POLICE STUNG IN BURGLARY OF SAFE

By Ed Koch
SUN Staff Writer

Calling Metro Police "the victim" of a crime, Sheriff John Moran said Monday that some $300,000 worth of blank travelers checks and an unspecified amount of drugs were stolen from a safety deposit box rented by the Metro Intelligence Bureau.

Moran made his statements at a press conference following published reports Monday of the burglary Saturday of the box in the Western Vault Co. at 2929 S. Maryland Parkway.

The American Express Travelers checks, on loan to police from the company, were part of what Moran called a "flash roll" used during undercover sting operations.

The checks and unspecified type of drugs are "flashed" by undercover police officers posing as the criminal element. As part of the sting operation, they escort criminal suspects to the vault to prove they have the financial backing to assist them.

Moran denied reports that cash and jewelry were taken from the safety deposit box. He further denied reports that an apartment used by police to carry out their covert operations was burglarized.

Moran confirmed, however, that there was no forced entry to the safety deposit box.

He said his department will not have to reimburse American Express unless the checks are cashed. He said that the numbers on the travelers checks have been reported to law enforcement agencies nationwide.

Despite the obvious embarrassment of the police becoming burglary victims, Moran defended the Intelligence Bureau and the department.

"I have complete faith and trust in the investigation (into the burglary)," Moran said. "And I have trust and faith in the Intelligence Bureau."

Asked if any of his officers had been disciplined in connection with the burglary, Moran said, "Absolutely not."

"Metro is the victim, and the investigation will be handled like any other criminal investigation," he said.

Moran addressed the press conference following a staff meeting Monday morning. In a one-page press release, he indicated that the undercover investigations were "ongoing." He did not indicate how the theft will effect those investigations.

Moran said that access logs maintained by Western Vault were seized by search warrant after one of the Intelligence Bureau officers discovered the burglary.

He said that only Intelligence Bureau officers and Western Vault employees were supposed to have keys to the safety deposit box.

Donald Haight, an attorney representing an unidentified man who claims a substantial sum also was missing from his box at Western Vault, said he was told by the company's officials that no access logs existed.

An attempt to reach Western Vault for comment was unsuccessful.

A Metro official said that undercover officers rented a safety deposit box because, for obvious reasons, they couldn't bring potential criminal suspects to the police station to show them the bait checks and drugs.

Las Vegas Sun
February 4, 1987

FBI WILL PROBE SAFE BURGLARY

By Ed Koch
SUN Staff Writer

The FBI launched Tuesday an investigation into the burglary of $300,000 worth of travelers checks from a safety deposit box rented by the Metro Police Intelligence Bureau.

"Because of the volume of the items missing and because of the potential interstate use of the stolen travelers checks, we are joining Metro in the investigation of the burglary," said FBI spokesman Mike Growney.

He added that the FBI's investigation will be separate from Metro's probe into the Saturday heist at the Western Vault Co., at 2929 S. Maryland Parkway, but that the law enforcement agencies will share their findings.

Also taken from the safety deposit box during the burglary was an unspecified amount and type of drugs. There was no forced entry to the box.

The American Express travelers checks, on loan to police from the company, and drugs were part of what police call a "flash roll" used during undercover sting operations.

The checks and drugs are "flashed" by undercover police officers posing as the criminal element. As part of the sting operation, they escort criminal suspects to the vault to prove they have the financial backing to do business with them.

Growney said that FBI officials met Tuesday with representatives from American Express and had contact with Metro officials about the matter sometime earlier.

"We are not joining the investigation because Metro is the victim," Growney said. "It is normal policy that

the FBI would become involved in the investigation of stolen travelers checks valued at $50,000."

Growney said, however, that they have become involved in such an investigation "a little sooner" than normal because of the potential use of the stolen checks in other states, which is a federal offense.

Growney said that the theft of the chceks alone is not a federal crime, unless they were taken from a bank, post office or federal facility.

He also said that until a travelers check is cashed, investigators probably would have no leads to their whereabouts except for whatever clues were left at the crime scene.

Metro Sheriff John Moran said that his department will not have to reimburse American Express unless the checks are cashed. He said that the numbers on the travelers checks have been reported to law enforcement agencies nationwide.

None of the checks has been reported cashed.

Las Vegas Sun
February 12, 1987

METRO USES DOGS TO SEARCH SAFES

By Harold Hyman
SUN Staff Writer

Armed with search warrants and two dope sniffing dogs, Metro Police opened dozens of lock boxes at Western Vault Corp., 2929 S. Maryland Parkway, but failed to find several pounds of cocaine that had been stolen from their own lock box there, it was disclosed Wednesday.

The exhaustive search, in which many of the suspect lock boxes had to be drilled open by a locksmith, was conducted from 1:30 p.m. to 11 p.m. on Tuesday, according to Metro chief of detectives Jerry Cunningham.

Cunningham is leading the investigation personally and was present when the locks boxes were opened.

"We found no narcotics. We still have a lot of leads that we are pursuing, Cunningham said, but indicated nothing came of the vault search.

Metro undercover officers had kept between two and four kilos of cocaine, plus $300,000 in travelers checks, in the lock box they had rented at the commercial public vault, but discovered the box empty Feb. 7.

After questioning the undercover officers who had access to the lock box, and reportedly satisfied they were not involved in the theft, Metro investigators focused on vault company employees who also had keys.

They were said to have assumed that if vault company employees were involved, they would not risk removing the stolen cocaine but would keep it under lock and key

on the premises, at least temporarily until the investigaton cooled.

A search warrant for all empty lock boxes in the vault was obtained and two dogs trained to detect drugs were used to indicate which boxes to open.

Las Vegas Sun
March 11, 1987

REWARD OFFERED IN VAULT CASES; 2 OFFICERS CLEARED

By Ed Koch
SUN Staff Writer

Metro Police, in an effort to rejuvenate a one-month old investigation into the theft of illegal drugs and traveler's checks from a safety deposit box issued to the department's Intelligence Bureau, offered Tuesday a reward through Secret Witness.

Metro Commdr. Jerry Cunningham also said that the two officers who were issued keys to the safety deposit box at Western Vault Co., 2929 S. Maryland Parkway, have passed polygraph tests.

Some $300,000 worth of American Express Traveler's checks and a reported $1 million worth of cocaine were taken from the vault company box in early February, police said.

"I authorized Secret Witness to offer the standard reward (up to $1,000) today," Cunningham said. "We didn't offer the reward before because there was enough interest over the incident and someone could have come forward.

"But since the furor has died, we believe it's time to offer a reward. We have no intention of abandoning this investigation."

The box was issued to the Intelligence Bureau to stash what police call a "flash roll," which is used as bait to catch wrongdoers during sting operations.

Cunningham said that none of the checks have been reported cashed since the burglary.

"We are satisfied that our officers were not involved in the burglary," Cunningham said. "Their answers (to questions during the lie detector tests) appeared truthful and not dubious."

Cunningham said that lawyers for Western Vault have declined a police invitation for that company's employees to take the polygraph tests. He said the company has requested to see the questions before the employees are allowed to be tested.

The validity of the controversial polygraph tests has been questioned in some circles, and the results are not allowed as evidence in court cases.

In another development, Cunningham said that a safety deposit key issued to police by the vault company was duplicated by a local locksmith who told them that similar copies could be made by a key duplicating machine in a department store.

Cunningham said police were told that security keys could not be duplicated. However, during the burglary investigation, a plain clothes officer, posing as a customer to the locksmith, received a duplicate of the Western Vault-issued key, Cunningham said.

Las Vegas Sun
March 26, 1987 (Date listed in Record not on Original)

BURGLARIZED VAULT FIRM CLOSES DOORS

Western Vault Corp., used by police in a secret drug sting operation, is closing on June 1.

Customers of the private vault company are being advised to remove all property from their safe-deposit boxes by that date.

A published advertisement said police had used lock boxes at Western Vault for a sting operation without the knowledge or permission of the company. The firm said its business had been damaged by the police activity.

The sting operation became public when $1 million worth of drugs and $300,000 in travelers checks were stolen from the police safe deposit boxes.

The thieves have never been identified.

Hundreds of Western Vault customers closed accounts after learning of the theft, company officials said. Subsequently, police obtained search warrants to open numerous boxes at the vault company during an investigation into the theft.

Las Vegas Sun
January 7, 1988, p. 5B

SLAUGHTER CASE RAISES MORE QUESTIONS THAN ANSWERS

Jeff German

Until about eight months ago, Ray Slaughter was riding high as the city's premiere polygraph examiner.

He worked and socialized with just about everyone of importance in the justice system—lawyers, cops, judges and FBI agents.

His world caved in last April 28, when he was arrested on charges of distributing roughly a half-ounce of cocaine to a beautiful woman who had befriended him while working undercover for the FBI.

Slaughter, though respected professionally, had established a reputation as a man who liked to party.

He was a regular at such after-work courthouse hangouts as T.K. Christy's and The Prime Rib. He often socialized at those hotspots with some of the same FBI men who arrested him.

His friends say Slaughter basically had two weaknesses—attractive women and allegedly cocaine.

While Slaughter reportedly used cocaine himself, he was anything but a big-time drug dealer.

The FBI agents who took him into custody April 28 knew that.

They weren't even after Slaughter. They were trying to hook bigger fish—some of the judges, the cops and the lawyers who had been hanging around with Slaughter.

Members of the FBI's Political Corruption Squad in Las Vegas spent a lot of time and effort to catch their former drinking buddy.

Agents even offered Slaughter a pass on the drug charges if he would give up his friends. They wanted to wheel and deal.

They were particularly interested in the results of a Slaughter-administered polygraph exam that had cleared two Metro intelligence officers of wrongdoing in the controversial rip-off of an undercover safe deposit box at the now-defunct Western Vault Corp.

Slaughter refused to cooperate and chose to fight the charges, instead.

Later this month, he's scheduled to stand trial in federal court.

There's little question he faces an uphill battle.

The government has tapes of Slaughter discussing the alleged drug deal with its undercover informant, Belinda Antal, a shadowy blonde bombshell who had cozied up to Slaughter under the FBI's watchful eye.

Antal, who claimed to be an unemployed casino industry worker, wore a body recorder while she allegedly badgered Slaughter into getting her the white stuff from his local connection.

I'm told the tapes are embarrassing to the likeable polygraph expert. He did a lot of bragging to the beguiling Antal. He said the kinds of things most men say in pursuit of a beautiful woman.

But when Slaughter goes to trial, his guilt or innocence, though important to him, may take a back seat to the bigger picture here.

What may be far more interesting to courthouse observers is the way FBI agents targeted and ensnared this mover and shaker in the legal community.

A lot of unanswered questions remain.

Why was the FBI's Political Corruption Squad so heavily involved in this minor league drug case?

How does the government indeed go about selecting its targets?

Why was Slaughter's well-known cocaine supplier allowed to go free and continue practicing his trade?

Is the government serious about making a dent into the drug trafficking problem in this country?

Or is it content to apply its drug enforcement powers toward other more glamorous goals?

Is it proper for law enforcement authorities to use gorgeous women to entice a man into committing a crime? And vice versa?

How many love-starved singles out there could resist such temptation?

These aren't unmeasurable questions to ask.

The citizenry's ability to scrutinize the conduct of its government is rooted in the First Amendment. It's what makes this country great.

Ray Slaughter already has paid dearly for his mistake.

As his trial gets underway in the days ahead, maybe we ought to consider whether our government has been honest with us in this case, too.

Las Vegas Sun
January 21, 1988, p. 5B

A COINCIDENCE? SLAUGHTER NAILED AFTER FLUNKING FBI AGENT IN LIE TEST

Jeff German

Has the saga of Ray Slaughter sagged into the depths of the "Outer Limits?"

Maybe so.

As it turns out, the embattled polygraph examiner tested a Las Vegas FBI agent accused of illegally using drugs and failed him several months before Slaughter himself was set up by the FBI on narcotics charges.

I'm told the agent, Derrick K. Neal, had been the subject of an internal FBI probe based in Washington in 1986. He reportedly flunked two FBI-administered lie detector exams as well.

Though no criminal charges apparently ever were filed against Neal, he quietly was transferred out of Las Vegas in November 1986. He's been stationed at the FBI's field office in Los Angeles since then.

Neal through his Las Vegas attorney Stan Hunterton, refused comment, citing the FBI's longstanding policy of not discussing internal investigations.

A spokesman for the FBI in Washington also declined to discuss the case.

But other informed sources said the agent, who had been working drug cases in Las Vegas, had come under scrutiny for lying about alleged illegal drug use on annual internal FBI questionnaires in 1984 and 1985. He had entered active FBI duty July 24, 1983.

Hunterton, a highly regarded former federal prosecutor, and his law firm had asked Slaughter to test Neal in June 1986 to refute the two failed FBI exams.

Among other things, Neal reportedly had been accused of smoking marijuana at a 1987 Christmas party and asking an informant to get his girlfriend some drugs.

Neal denied ever using illegal narcotics or providing them to anyone, and he claimed he had been badgered into making certain admission of guilt by the FBI's own polygraph examiners.

But despite that, Slaughter concluded that Neal had lied to him when directly confronted about his alleged drug use.

Slaughter made out a report on his findings June 12, 1986. It showed that Neal was well within the generally accepted area of deception on many of the key questions.

Just what kind of disciplinary action the FBI took against Neal is not known.

Maybe it's just a coincidence, but in April 1987, FBI agents assigned to the bureau's Political Corruption Squad in Las Vegas ended up arresting Slaughter on drug charges.

Slaughter, a courthouse mover and shaker who had a reputation for partying, was charged with distributing about a half-ounce of cocaine to an undercover informant on several occasions.

The undercover operative, Belinda Antal, was a beautiful woman who had befriended Slaughter at the FBI's request for the sole purpose of ensnaring the politically connected polygraph examiner in the drug deal.

Slaughter, I'm told, flat out admits he frequently used cocaine, but he denies ever being a trafficker.

As for the real drug dealer in the set-up, the man who allegedly sold Slaughter the cocaine for Antal, FBI agents conveniently forgot to include him in their dragnet.

All this, of course, makes you wonder why agents felt the need to manufacture a drug case against Slaughter when they apparently had a ready-made case in their own house.

But in the "Outer Limits," anything is possible, I guess.

Las Vegas Sun
January 28, 1988, p. 5B

SOMETHING'S COOKING AT THE COURTHOUSE

Jeff German

As courthouse battles go, it's likely to be a blockbuster.

So don't go away.

Before too long, things are going to get about as hot around here as a bowl of sizzling rice soup.

Local prosecutors are zeroing in on an indictment in a top-secret grand jury probe of last year's incredible theft from a police safe-deposit box at the old Western Vault Corp.

In all $1 millon worth of cocaine and $300,000 in travelers checks earmarked for undercover intelligence investigations were stolen.

This is anything but a simple story, but here's what I've been able to piece together.

Las Vegas businessman Grady Sanders, president of the vault company, is the key target of the super-sensitive probe being spearheaded by Chief Deputy District Attorney Bob Teuton.

Sanders, a prominent UNLV booster, has hired powerhouse attorney Dominic P. Gentile to convince prosecutors there's good reason to derail the pending indictment.

But so far, though they're listening to Gentile, prosecutors are bent on seeking the indictment in the near future, maybe sooner than we think.

From here on, the story gets tricky.

Sanders, I'm told, outright denies having anything to do with the theft. He's been openly critical of the way

police handled the investigation from the outset. He's even lost business over it.

Furthermore, both Sanders and Gentile are convinced that two intelligence detectives who had access to the safe deposit box stole the goods. They believe there's no more evidence against Sanders than the cops.

Even more interesting, despite his past denials, Sanders now is prepared to admit he's maintained a longstanding cozy relationship with FBI agents.

He's willing to admit he indeed has voluntarily cooperated with agents in past investigations and that he still keeps close ties with them.

It was reported here last June that Sanders, at the FBI's request, once tried to ensnare former state Sen. Floyd Lamb in an undercover sting. Lamb didn't take the bait, but he later was indicted and convicted in another political corruption case.

The warm relationship between Sanders and the FBI is important because agents also are said to be operating under the theory the intelligence officers may be the real culprits in the vault theft.

Though agents reportedly haven't uncovered any solid evidence against the cops, they're said to be still digging.

Last April, for example, they set up longtime Las Vegas polygraph examiner Ray Slaughter on drug charges with the hopes, in part, of getting him to cooperate in the case. Slaughter earlier had cleared the two officers of wrongdoing with a polygraph test.

When he refused to cooperate, the FBI pressed ahead with charges. His trial, originally set to get under way in federal court this week, has been delayed indefinitely.

Meanwhile, the DA and Metro Police have revved up the afterburners in the case against Sanders, unfettered by the FBI's potentially menacing presence.

The two cops are being backed all the way by their supervisors, who are convinced Sanders is the main suspect.

As the DA's explosive grand jury investigation draws to an end, it seems destined to rip apart relations between Metro's elite Intelligence Bureau and the FBI.

Already, there are signs of tension and distrust between the two.

Several intelligence detectives privately have been criticizing the FBI for independently pursuing the case against the cops, when the evidence they believe points more to Sanders, the FBI's man.

In the days ahead, expect the fireworks to escalate, as the battle between Sanders and the cops burns a scorching pathway through the heart of the courthouse.

I'm afraid the remnants of this blockbuster will be with us for a long time.

Las Vegas Sun
February 5, 1988, p. 5B

SLAUGHTER CASE STIRRING MORE COURTHOUSE RUMBLINGS

Jeff German

They're shakin' and bakin' at the federal courthouse right about now.

Hot, hot, hot. Here's the lowdown.

Assistant Federal Public Defender Randall Roske, another one of those gutsy criminal lawyers, has dumped a batch of sizzling subpoenas on the U.S. Marshals Service.

Once these hot potatoes are served, they're likely to rattle the cages of more than a few G-men at the courthouse as the explosive drug trial of polygraph man Ray Slaughter gets under way later this month.

From what I hear, the prosecutor in the Slaughter case, Chief Assistant U.S. Attorney L.J. O'Neale, already is feeling a few aftershocks.

The other day, O'Neale banned Roske's controversial investigator in the case, Jack Ruggles, from his office.

Word reportedly got back to the prosecutor that Ruggles had been checking out some interesting rumors about him during the course of the defense investigation.

Those rumors turned out to be unfounded.

So who's on the list of witnesses Roske wants the marshals to subpoena in Slaughter's trial?

For starters, there's former U.S. District Judge Harry Claiborne, Sheriff John Moran, ex-homicide detective Chuck Lee and Metro Intelligence Lt. Loren Stevens.

Also on the list are Intelligence Sgt. Ed Schaub and Detective Steve Scholl, key figures in the theft of cocaine and travelers checks from a police safe deposit box at the Western Vault Corp.

Over the years, Slaughter, in one way or another, has helped the above subjects clear themselves of suspicious activities alleged by the FBI and its informants.

For example, in 1982 Slaughter tested Moran and concluded the sheriff was telling the truth when he denied that he had received a $40,000 campaign contribution from the late reputed mobster Anthony Spilotro.

Last year, the polygraph examiner found that Schaub and Scholl told the truth when they insisted they didn't steal four kilos of cocaine and $300,000 in travelers checks from the police safe deposit box.

Slaughter also once backed Lee, a respected polygraph expert in his own right, who had cleared Claiborne of wrongdoing early on in the Justice Department's convoluted probe of the judge.

Lee later was targeted by the FBI in an offshoot of the Claiborne investigation.

Claiborne ultimately was convicted on tax evasion charges, but not before he repeatedly alleged he was the victim of a government vendetta.

By calling Claiborne and company, Roske hopes to show that Slaughter, a longtime courthouse heavyweight, was targeted by FBI agents because he didn't call things the way they saw it.

Slaughter was arrested last April by agents assigned to the FBI's Political Corruption Squad.

He was charged with distributing roughly a half-ounce of cocaine to a beautiful undercover operative on several occasions.

Some now are suggesting Roske is trying to put on a "smokescreen defense" designed to divert attention away from the drug charges against Slaughter.

But Roske is deadly serious about proving his client was set up for political reasons.

If he can get his witnesses on the stand things may be shaking at the federal courthouse for a long time.

Las Vegas Sun
February 6, 1988, p. 1A

METRO MISSING $1.3 MILLION IN DRUGS, CHECKS

JURY INDICTS VAULT OWNER ON $2.5 MIL. THEFT CHARGE

By Pauline Bell
and Harold Hyman
SUN Staff Writers

The owner of the now defunct Western Vault Corp. was indicted by a Clark County grand jury Friday on charges he stole $2.5 million in cash, coins, jewelry and other merchandise, including about $1.3 million worth of drugs and travelers checks belonging to Metro Police, from safe deposit boxes at the business.

However, the attorney for businessman Grady Sanders said his client is being set up as "the scapegoat" for the Metro detective who really stole the checks and cocaine. Evidence presented at trial will prove Sanders innocent, said defense lawyer Dominic P. Gentile.

Sanders, accompanied by Gentile, was present in the courtroom of Chief District Judge Myron Leavitt when the indictment was returned. The 51-year-old Las Vegan surrendered to authorities, was formally booked on the charges in the 11-count felony indictment, and was later released on his own recognizance.

The judge set Sanders' bail at $100,000 and gave him two weeks to secure it.

Sanders is scheduled to be arraigned in the courtroom of Judge Earle White Feb. 22 on two counts of racketeering, eight counts of grand larceny and one count of trafficking in a controlled substance.

Metro undercover officers rented a safety deposit box at the company at 2929 S. Maryland Parkway and used

it to store American Express travelers checks and four kilos of cocaine used in undercover drug sting operations. The checks and drugs were discovered missing early last year.

Additionally, the indictment charges Sanders with stealing some $1.2 million worth of jewelry, commemorative coins, silver, gold and cash from seven people who rented safety deposit boxes at the company in 1985, 1986 and 1987.

In a news conference after the indictment was returned, Gentile said Sanders is innocent of all charges against him.

The defense attorney said he has evidence that will prove that Metro Detective Steve Scholl, one of the undercover detectives who had access to the safety deposit box, "is most likely responsible for the theft."

He describes Scholl as being in "the most direct position" to have access to the drugs and checks.

The indictment of Sanders is an effort by Metro officials to "get themselves out of trouble" and to cover up the wrongdoing of one of their own, he alleged.

As for the other alleged theft victims, Gentile said some four of them are known drug dealers and money launderers who would have had ulterior motives for claiming they had money and other property stolen from the boxes.

Gentile implied that some of the alleged stolen property may never have been in the boxes in the first place, and he mentioned insurance fraud as one possible motive for the other victims reporting property missing.

Chief Deputy District Attorney Bob Teuton, responding to Gentile's allegations that authorities are making Sanders a scapegoat, said the indictment is a legitimate one.

Prosecutors can't bring an indictment to court unless they can prove the charges in it beyond a reasonable doubt, he said.

Metro officials also adamantly denied Gentile's assertions.

"We in Metro are very satisfied our officers (Scholl and Sgt. Ed Schaub) had nothing to do with this theft or any other. They are both above reproach. Both are veteran police officers who are dedicated to honest law enforcement," said Metro Deputy Chief John L. Sullivan.

KLAS, TELEVISION CHANNEL 8, SUMMARY OF NEWS BROADCASTS REGARDING THE SANDERS CASE.

SYNOPSIS OF KLAS STORIES REGARDING GRADY SAUNDERS (SIC) AND WESTERN VAULT.

1-11-83: PROFILE OF NEW WESTERN VAULT, DESCRIPTION OF SECURITY SYSTEMS AND INSURANCE FOR CUSTOMERS. ALSO STORY INDICATES HOW CUSTOMERS' PRIVACY IS MAINTAINED BECAUSE NO NAMES ARE USED IN ENTRY TO THE VAULT, JUST FINGERPRINTS.

3-10-87: NED DAY REPORT ABOUT A METRO AFFADAVIT THAT DESCRIBES GRADY S. AS UNWILLING TO COOPERATE IN THE INVESTIGATION OF THE VAULT BURGLARY. AFFADAVIT ALLEGES THAT SAUNDERS DRILLED BOXES WITHOUT THE PERMISSION OF THE CUSTOMERS AND AT LEAST 15 TIMES, FOUND ILLEGAL DRUGS BUT DID NOT INFORM POLICE. ALLEGES THAT SAUNDERS REFUSED TO TURN OVER DOCUMENTS TO POLICE, ALSO QUOTES SAUNDERS AS SAYING THAT DRUG SNIFFING DOG IN WESTERN VAULT WOULD BE "WORN OUT." STORY ALSO DESCRIBES SAUNDERS VARIOUS BUSINESS INTERESTS.

3-10-87: CONTINUATION OF ABOVE STORY IN WHICH SAUNDERS RESPONDS TO AFFADAVIT ALLEGATIONS. HE DENIES EVER DRILLING INTO BOXES, ACCUSES POLICE OF TRYING TO SHIFT THE BLAME AWAY FROM THEMSELVES, LAMBASTS METRO FOR DARING TO RUN A STING OPERATION IN HIS VAULT WITHOUT HIS PERMISSION, POSSIBLY ENDANGERING CUSTOMERS.

6-1-87: STORY ABOUT THE CLOSURE OF WESTERN VAULT. WHILE SAUNDERS WOULD NOT COMMENT, METRO COMMANDER CUNNINGHAM IS QUOTED AT LENGTH EXPLAINING THAT SAUNDERS REFUSED TO COOPERATE, REFUSED TO TAKE A POLYGRAPH, HAS REFUSED TO ANSWER QUESTIONS TO METRO'S SATISFACTION. CUNNINGHAM SAYS METRO IS CONVINCED THE THEFT WAS SOME SORT OF INSIDE JOB—'WESTERN VAULT INVOLVEMENT'. HE ALSO SAYS INVESTIGATORS HAVE UNCOVERED INCRIMINATING EVIDENCE BUT NOT QUITE ENOUGH TO PINPOINT AN EXACT SUSPECT. REPORTER INDICATES THE PROBE IS FAR FROM OVER.

10-8-87: EYEWITNESS NEWS HAS LEARNED THAT THE CLARK CO. GRAND JURY BEGAN HEARING TESTIMONY INTO THE VAULT CAPER. SOURCES INDICATE THE FOCUS OF THE PROBE IS WESTERN VAULT ITSELF. INVESTIGATORS BELIEVE W. VAULT ALLOWED THE UNAUTHORIZED OPENING OF BOXES, INCLUDING THE METRO BOX. STORY MENTIONS OTHER CUSTOMERS WHO SAY THEIR BOXES WERE RIFLED. THOSE VICTIMS ARE EXPECTED TO TESTIFY. SAUNDERS COULD NOT BE REACHED FOR COMMENT.

2-5-88:
GENTILE NEWS CONFERENCE STORY. GENTILE COMPARES THE W. VAULT BURGLARY TO THE FRENCH CONNECTION CASE IN WHICH THE BAD GUYS WERE COPS. GENTILE SAYS THE EVIDENCE IS CIRCUMSTANTIAL AND THAT THE COPS SEEM THE MORE LIKELY CULPRITS, THAT DET. SCHOLL HAS SHOWN SIGNS OF DRUG USE, THAT THE OTHER CUSTOMERS WERE PRES-

SURED INTO COMPLAINING BY METRO, THAT THOSE CUSTOMERS ARE KNOWN DRUG DEALERS, AND THAT OTHER AGENCIES HAVE OPERATED OUT OF W. VAULT WITHOUT HAVING SIMILAR PROBLEMS.

2-5-88: METRO NEWS CONFERENCE IN WHICH CHIEF SULLIVAN EXPLAINS THAT THE OFFICERS INVOLVED HAVE BEEN CLEARED BY POLYGRAPH TESTS. STORY MENTIONS THAT THE POLYGRAPHER WAS RAY SLAUGHTER, UNUSUAL BECAUSE SLAUGHTER IS A PRIVATE EXMINER, NOT A METRO EXAMINER. REPORTER DETAILS SLAUGHTER'S BACKGROUND, INCLUDING HIS TEST OF JOHN MORAN REGARDING SPILOTRO CONTRIBUTIONS. ALSO MENTIONS SLAUGHTERS' DRUG BUST, SPECULATES ABOUT WHETHER IT WAS A SETUP BY THE FBI. QUOTES GENTILE AS SAYING THE TWO CASES ARE DEFINITELY RELATED.

TELEVISION CHANNEL 3, PARTIAL TRANSCRIPTION OF NEWS BROADCAST REGARDING SANDERS CASE.

TONITE METRO POLICE ARE VIGOROUSLY CONTINUING THE INVESTIGATION INTO THE LOSS OF DRUGS AND TRAVELERS CHECKS USED IN AN UNDERCOVER OPERATION . . .

POLICE SAY THE DRUGS AND TRAVELERS CHECKS WERE STOLEN FROM A SAFE DEPOSIT BOX INSIDE WESTERN VAULT COMPANY ON MARYLAND PARKWAY.

AT LAST REPORT, METRO OFFICERS WERE STILL ON THE SCENE SERVING A SEARCH WARRANT . . .

OFFICERS ARE REPORTEDLY SEARCHING EVERY SAFE DEPOSIT BOX AT WESTERN VAULT THAT IS LISTED AS EMPTY ON COMPANY RECORDS . . . POLICE ARE ALSO SEARCHING EVERY BOX THAT ATTRACTS THE ATTENTION OF A NARCOTICS SNIFFING DOG . . .

POLICE BELIEVE THE DRUGS AND TRAVELERS CHECKS MIGHT HAVE BEEN STOLEN FROM THEIR SAFE DEPOSIT BOX AND PLACED INSIDE ANOTHER BOX AT WESTERN VAULT . . .

AN INTENSE POLICE INVESTIGATION INTO THE THEFT OF DRUGS AND TRAVELERS CHECKS FROM A SECRET SAFE DEPOSIT BOX CONTINUES TODAY.

MORE THAN A WEEK AGO POLICE REVEALED THAT THEY HAD BEEN RIPPED OFF.

ABOUT 9 POUNDS OF COCAINE AND 300-THOUSAND DOLLARS WORTH OF TRAVELERS CHECKS WERE TAKEN IN THE THEFT.

DAN BURNS IS IN THE NEWSROOM NOW WITH THE LATEST .... DAN .....

[ILLEGIBLE] VERY ANGRY OVER THE [ILLEGIBLE] THEFT OF THE COCAINE AND TRAVELERS CHECKS . . . FROM SHERIFF JOHN MORAN . . . ON DOWN.

THAT EXPLAINS WHY POLICE ARE WORKING SO HARD ON NABBING THE PERSON OR PEOPLE RESPONSIBLE.

TIME 1:09
OUTCUE . . . OF THE LOOT BEHIND.